A white silhouette of the state of Illinois is positioned in the upper right corner of the cover, partially overlapping the red and dark blue background sections.

Illinois Pattern Jury Instructions — Criminal

Volume 1

Special Supreme Court Committee on
Pattern Jury Instructions—Criminal

2022-2023 EDITION



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Illinois Pattern Jury Instructions—Criminal

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INTRODUCTION TO IPI CRIMINAL

The following Illinois pattern jury instructions for criminal cases represent the cumulative effort of many dedicated past and present members of the Special Supreme Court Committee on Pattern Jury Instructions—Criminal.

The committee takes great effort in drafting clear and concise instructions for use by judges and practitioners, insuring that each instruction complies with all due process requirements, accurately states current statutory and case law, follows the intent of the legislature, is grammatically correct, and is presented in a clear and uniform manner. Most importantly, the committee strives to provide jurors with easy to understand definitions and issues instructions to help guide their deliberations in reaching an accurate verdict.

The committee wishes to thank the following persons for their guidance, support, vision, and hard work: Justice Robert L. Carter, the current committee's liaison with the Illinois Supreme Court, and all past Supreme Court liaisons; Michelle J. Courier, the current committee's liaison with the Administrative Office of the Illinois Courts, and all past AOIC liaisons; Professor John Erbes, the current committee Reporter, and all past committee Reporters; all of the former members of the committee; and, all of the past chairs of the committee.

The Special Supreme Court Committee on Pattern Jury Instructions—Criminal is dedicated to improving criminal justice by providing clear and accurate instructions. It is a privilege and an honor to serve as chair of this committee with so many intelligent, hard-working and conscientious women and men.

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Chapter 1.00

FUNCTION OF COURT, JURY, AND COUNSEL

SYNOPSIS

SCOPE

- 1.01 The Functions Of The Court And The Jury**
- 1.01A Preliminary Cautionary Instructions Before Opening Statements**
- 1.01B Implicit Bias**
- 1.02 Jury Is Sole Judge Of The Believability Of Witnesses**
- 1.03 Arguments Of Counsel**
- 1.04 Corporate Defendant**
- 1.05 Jury Notetaking**
- 1.06 Interpreter's Presence During Jury Deliberations**

SCOPE

The instructions in this chapter describe the functions of the court, the jury, and counsel. In the usual case all of the numbered paragraphs in Instructions 1.01, 1.02, and 1.03 will be given. Instruction 1.04 will be given only when a corporation is a defendant.

The Committee recommends that these be the first instructions read to the jury.

The numbers in the brackets preceding each paragraph should not be included when the instruction is given. Alternative language designed to meet the circumstances of each case is either bracketed or enclosed in parentheses.

1.01 The Functions Of The Court And The Jury

[1] Members of the jury, the evidence and arguments in this case have been completed, and I now will instruct you as to the law.

[2] The law that applies to this case is stated in these instructions, and it is your duty to follow all of them. You must not single out certain instructions and disregard others. [When I use the word “he” in these instructions, I mean a male or a female.]

[3] It is your duty to determine the facts and to determine them only from the evidence in this case. You are to apply the law to the facts and in this way decide the case.

[4] You are not to concern yourself with possible punishment or sentence for the offense charged during your deliberation. It is the function of the trial judge to determine the sentence should there be a verdict of guilty.

[5] Neither sympathy nor prejudice should influence you. You should not be biased in favor or against any person because of that person’s race, ethnicity, national ancestry, religion, gender, sexual orientation, age, disability, or socioeconomic status.

[6] From time to time it has been the duty of the court to rule on the admissibility of evidence. You should not concern yourselves with the reasons for these rulings. You should disregard questions [and exhibits] which were withdrawn or to which objections were sustained.

[7] [Any evidence that was received for a limited purpose should not be considered by you for any other purpose.]

[8] You should disregard testimony [and exhibits] which the court has refused or stricken.

[9] The evidence which you should consider consists only of the testimony of the witnesses [and (the exhibits) (and) (stipulations) (and) (judicially noticed facts)] which the court has received. [You may, but are not required to, accept as conclusive any fact judicially noticed.]

[10] You should consider all the evidence in the light of your own observations and experience in life.

[11] We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit biases” or “unconscious biases.”

[12] Our biases often affect how we act, favorably or unfavorably, toward someone. Biases also can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

[13] As jurors you are being asked to make important decisions in this case. You must resist jumping to conclusions based on personal likes or dislikes. You must not let bias, prejudice, or public opinion influence your decision.

[14] Neither by these instructions nor by any ruling or remark which I have made do I mean to indicate any opinion as to the facts or as to what your verdict should be.

[15] Faithful performance by you of your duties as jurors is vital to the administration of justice.

Committee Note

The Committee has added the bracketed material in paragraph [2], and paragraph [9] to be used when applicable.

The Committee has substituted the word “ethnicity” for the word “color” and added “age,” “disability” and “socioeconomic status” to the second sentence of paragraph [5].

The Committee has added brackets to paragraph [7] because limiting instructions are not given in every case. Use paragraph [7] only when a limiting instruction has been given.

The Committee had added “stipulations” and “judicially notice facts” in paragraph [9] as types of evidence a jury should consider during the course of its deliberations. In Illinois Rule of Evidence 201(g), the Illinois Supreme Court stated, “In a criminal case, the court shall inform the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.” The second sentence in Paragraph [9] has been added so that this Instruction complies with Rule 201(g).

The Committee has made amendments and added new language to incorporate Instruction 1.01B on implicit bias in paragraphs [5], [11], [12] and [13], and renumbered previous paragraphs [11] and [12] as [14] and [15]. The Committee recommends that the language in paragraphs [5], [11], [12] and [13] be given in all cases.

Use applicable paragraphs and bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

1.01A Preliminary Cautionary Instructions Before Opening Statements

[1] Members of the jury, the trial is about to commence, and I now will instruct you as to the law regarding some of your duties during trial and deliberations.

[2] You should not do any independent investigation or research on any subject or person relating to the case. What you may have seen or heard outside the courtroom is not evidence. This includes any press, radio, or television programs and it also includes any information available on the Internet. Such programs, reports, and information are not evidence and your verdict must not be influenced in any way by such material.

[3] For example, you must not use the Internet, including [(Google) (Wikipedia) (insert current examples)], or any other sources that you might otherwise use, to search for any information about the case, or the law which applies to the case, or the people involved in the case, including the defendant, witnesses, lawyers, and judge.

[4] During the course of the trial, do not communicate with, provide information personally, in writing, or electronically to anyone about this case—not even your own families or friends, courtroom personnel, and also not even among yourselves until instructed otherwise.

[5] You must not provide any information about the case to anyone by any means at all, and this includes posting information about the case, or your thoughts about it, on any device or Internet site, including [(blogs) (chat rooms) or (insert current examples)], or any social networking websites, such as [(Twitter) (Facebook) or (insert current examples)], or any other means.

[6] You cannot use any electronic devices or services to communicate about this case, including [(cellphones) (smartphones) (laptops) (the Internet) (insert current examples)] and any other tools of technology. The use of any such devices or services in connection with your duties is prohibited.

[7] Lawyers, parties, and witnesses are not permitted to speak with you about any subject, even if unrelated to this case, until after the case is over and you are discharged from your duties as jurors.

Committee Note

Read this Instruction prior to opening statements. Submit this Instruction in writing along with the other instructions at the end of the trial.

The Committee strongly encourages judges to remind the jurors before breaks and at the beginning and end of each day of trial that they are prohibited from researching the case on the Internet (including, but not limited to, an admonition that the jurors are not to view any location relevant to the trial by electronic means or visiting the site in person) and prohibited from communicating about the case by any means, including, but not limited to, social media. A judge should mention various types of social media if the judge concludes that it is warranted.

The Committee has added new language and bracketed material to paragraph [3], added paragraphs [5] and [6], and renumbered former paragraph [5] as paragraph [7], to emphasize the types of Internet activity and electronic communications that are prohibited.

A jury or juror may not conduct experiments or view extraneous information not offered into evidence that will have the effect of putting them in possession of evidence not offered at trial. *People v. Holmes*, 69 Ill. 2d 507 (1978); *People v. White*, 365 Ill. 499, 514, 6 N.E.2d 1015 (1937).

“[P]rivate communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear.” *People v. Hobley*, 182 Ill. 2d 404, 459 (1998) quoting *Mattox v. United States*, 146 U.S. 140, 150 (1898).

Use appropriate bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

1.01B Implicit Bias

[1] We all have feelings, assumptions, perceptions, fears, and stereotypes about others. Some biases we are aware of and others we might not be fully aware of, which is why they are called “implicit biases” or “unconscious biases.”

[2] Our biases often affect how we act, favorably or unfavorably, toward someone. Biases can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

[3] As jurors you are being asked to make important decisions in this case. You must resist jumping to conclusions based on personal likes or dislikes. You must not let bias, prejudice, or public opinion influence your decision.

[4] You must not be biased in favor of or against any person because of his or her race, ethnicity, national ancestry, religion, gender, sexual orientation, age, disability, or socioeconomic status.

[5] Your verdict must be based solely on the evidence presented.

Committee Note

This Instruction should be read prior to jury selection and prior to opening statements.

Implicit bias has been the subject of much scholarly attention. See, e.g., Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1 (2007); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012); Justin D. Levinson, Mark W. Bennett & Koichi Hioki, *Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes*, 69 FLA. L. REV. 63 (2017); Judge Andrew J. Wistrich & Jeffrey J. Rachlinski, *Implicit Bias in Judicial Decision Making: How It Affects Judgment and What Judges Can Do About It*, in ENHANCING JUSTICE: REDUCING BIAS (2017). It has also been the focus of attention by organizations dedicated to improving the courts and legal profession, such as the National Center for State Courts and the American Bar Association. See, e.g., Jerry Kang, Nat’l Ctr. for State Cts., *Implicit Bias: A Primer for Courts* (Aug. 2009); Jennifer K. Elek & Paula Hannaford-Agor, *Implicit Bias and the American Juror*, 51 CT. REV. 116 (2015); Jennifer K. Elek & Paula Hannaford-Agor, *First, Do No Harm: On Addressing the Problem of Implicit Bias in Juror Decision Making*, 49 CT. REV. 190 (2013); Am. Bar. Ass’n, *Achieving an Impartial Jury (Au) Toolbox*, available at, https://www.americanbar.org/content/dam/aba/publications/criminaljustice/voirdire_toolchest.pdf.

The literature on implicit bias explains that everyone has implicit biases. This means that judges and jurors are not immune. Although judges can attend workshops that teach about implicit bias, jurors do not receive any such training. Therefore, it is important for the court to make jurors aware that everyone is affected by implicit biases. It is particularly important for judges and jurors, who strive to be impartial decision-makers, to be aware of this phenomenon and to try to guard against it for purposes of the trial.

Although Illinois case law does not require an implicit bias instruction, the

Illinois Supreme Court has recognized the importance of training judges about implicit bias. See, e.g., Chief Justice Lloyd A. Karmeier, *Another Step Toward Equal Justice: Identifying Implicit Bias*, ILLINOIS COURTS CONNECT, (Feb. 1, 2018), at http://courts.illinois.gov/Media/eNews/2017/112917_chief_message.asp. To that end, the Illinois Supreme Court created the Committee on Equality in 2015. The Committee on Equality has been charged with working with other offices and agencies in Illinois to “coordinate ongoing judicial education around the state to help judges incorporate anti-bias ideas and procedures into judicial decision-making.” Illinois Supreme Court Press Release, *Illinois Supreme Court Announces Findings, Next Steps Following Judicial Decision-Making Study* (Nov. 6, 2017). The press release notes that while implicit biases cannot be eliminated they may be “mitigated by promoting self-awareness.” *Id.*

Some states, such as California, have added an instruction on implicit bias. See JUDICIAL COUNCIL OF CALIFORNIA, CALIFORNIAN CIVIL JURY INSTRUCTIONS (CACI) 113 (2017) (Bias). Federal courts in other states, such as the Western District of Washington, have added a short video addressing the topic. See *Understanding the Effects of Unconscious Bias*, at <https://www.wawd.uscourts.gov/jury/unconscious-bias>, along with instructions. See *id.* Some courthouses in Washington show the video to prospective jurors while they are waiting in the Jury Assembly Room to be assigned to a courtroom. Although empirical studies have not established that awareness—whether through instructions or videos—can eliminate people’s implicit biases, there is general agreement that awareness is the best step forward and does more good than harm. See, e.g., Kang et al., *supra*, at 1184.

1.02 Jury Is Sole Judge Of The Believability Of Witnesses

Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, [his age,] his memory, his manner while testifying, any interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

[You should judge the testimony of [(a) (the)] defendant[s] in the same manner as you judge the testimony of any other witness.]

Committee Note

Give the bracketed material relating to age only when a very elderly or very young witness has testified.

Give the bracketed material relating to defendant's testimony only when a defendant has testified.

While this instruction contains most of the usual elements of believability, the Committee recognizes that the evidence of a particular case could call for the insertion of additional elements. For example, see *People v. Franz*, 54 Ill. App. 3d 550, 11 Ill. Dec. 483, 368 N.E.2d 1091 (2d Dist. 1977), where the Court held: "An instruction informing the jury that it could consider the evidence that a witness was addicted to drugs at the time of the crime in judging that witness' credibility would have been proper." Cf. *People v. Phillips*, 126 Ill. App. 2d 179, 261 N.E.2d 469 (1st Dist. 1970). But cf. *People v. Collins*, 51 Ill. App. 3d 993, 10 Ill. Dec. 116, 367 N.E.2d 504 (3d Dist. 1977).

In addition, the Committee has decided that the weighing of an eyewitness's testimony is deserving of a separate instruction. See Instruction 3.15.

For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

1.03 Arguments Of Counsel

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence, and any statement or argument made by the attorneys which is not based on the evidence should be disregarded.

Committee Note

This is an appropriate reinforcement of the court's earlier admonition that the jury should decide the case only "from the evidence in this case." See Instruction 1.01[3].

For an example of the use of this instruction, see Sample Sets 27.01 through 27.07.

1.04 Corporate Defendant

The defendant corporation[s] in this case should be given the same fair treatment you would give to an individual defendant.

Committee Note

Give this instruction only when a defendant is a corporation. Compare IPI-Civil Instruction 1.01[6]. It is best given as a part of Instruction 1.01 immediately following paragraph [5].

Give this instruction only when requested by the defendant.

1.05 Jury Notetaking

Those of you who took notes during trial may use your notes to refresh your memory during jury deliberations.

Each juror should rely on his or her recollection of the evidence. Just because a juror has taken notes does not necessarily mean that his or her recollection of the evidence is any better or more accurate than the recollection of a juror who did not take notes.

When you are discharged from further service in this case, your notes will be collected by the deputy and destroyed. Throughout that process, your notes will remain confidential and no one will be allowed to see them.

Committee Note

725 ILCS 5/115-4(n) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 115-4(n)).

The Committee takes no position on whether this instruction should be given. However, it has been held that under the statute a trial judge *must* allow the jurors the right to take notes. *People v. Strong*, 274 Ill. App. 3d 130, 210 Ill. Dec. 743, 653 N.E.2d 938 (1st Dist. 1995). Therefore, should a judge decide to instruct the jury on this subject, it may be helpful to provide the jury with this instruction both before opening statements as well as at the conclusion of the case.

For an example of the use of this instruction, see Sample Set 27.07.

1.06 Interpreter's Presence During Jury Deliberations

The interpreter will be present during jury deliberations solely for the purpose of aiding communications between the hearing-impaired juror and the other jurors.

The interpreter is not a juror and therefore cannot offer opinions or recollections concerning testimony, evidence, or trial proceedings. Do not ask the interpreter for recollections or opinions concerning any aspect of the trial.

Committee Note

705 ILCS 315/1(a) (West 1999) (formerly Ill. Rev. Stat. ch. 78, § 36(a) (1991)).

Section 315/1(a) provides that a hearing-impaired juror “may be accompanied by and communicate with a court appointed interpreter throughout any period during which the jury is sequestered or engaged in deliberations.”

In a case where an interpreter has been assisting a juror, the court may wish to give this instruction to reduce the risk of improper communication between the jury and the interpreter during deliberations.

The Committee takes no position on whether this instruction must be given.

Chapter 2.00

BURDEN OF PROOF

SYNOPSIS

INTRODUCTORY NOTE

PART I. GENERAL CHARGING INSTRUCTION

Introductory Note

- 2.01 The Charge Against The Defendant—Jury Is Not To Be Instructed On Second Degree Murder—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

PART II. FIRST AND SECOND DEGREE MURDER—NO INVOLUNTARY MANSLAUGHTER

- 2.01A The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01B The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 2.01C The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01D The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 2.01E The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01F The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be

Instructed On Some Other Charge Or Charges

- 2.01G** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01H** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

PART III. FIRST AND SECOND DEGREE MURDER AND INVOLUNTARY MANSLAUGHTER

- 2.01I** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On Any Other Charge
- 2.01J** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On Some Other Charge Or Charges
- 2.01K** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01L** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 2.01M** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01N** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 2.01O** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01P** The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

PART IV. LESSER INCLUDED OFFENSES

- 2.01Q** The Charge Against The Defendant—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill

Verdict—Jury Is Not To Be Instructed On Any Charge Other Than The Greater And Lesser Included Offenses

- 2.01R** The Charge Against The Defendant—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Charge Other Than The Greater And Lesser Included Offenses
- 2.01S** The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01T** The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 2.01U** The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01V** The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges
- 2.01W** The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge
- 2.01X** The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

PART V. NO LESSER INCLUDED OFFENSES

- 2.01Y** The Charge Against The Defendant—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict
- 2.01Z** The Charge Against The Defendant—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict
- 2.01AA** The Charge Against The Defendant—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict
- 2.02** Information—Indictment—Complaint Not Evidence
- 2.03** Presumption Of Innocence—Reasonable Doubt—Burden Of Proof Generally
- 2.03A** Presumption Of Innocence—Reasonable Doubt—Burden Of Proof In First Degree-Second Degree Murder Cases
- 2.03B** Presumption Of Innocence—Reasonable Doubt—Burden Of Proof—Insanity

- 2.04** **Failure Of Defendant To Testify**
- 2.05** **Definition Of Reasonable Doubt**
- 2.06** **Bill Of Particulars**
- 2.07** **Venue (Before August 11, 1995)**
- 2.07X** **Venue (As Of August 11, 1995)**
- 2.08** **Issues In Venue (Before August 11, 1995)**
- 2.08X** **Issues In Venue (As Of August 11, 1995)**

INTRODUCTORY NOTE

The instructions in this chapter deal with the indictment, information or complaint, burden of proof, and the presumption of innocence. One of the 2.01 *et seq.* instructions, Instruction 2.02, and one of the 2.03 *et seq.* instructions must be given in all cases. Instruction 2.04 should be given only at the defendant's request, and then it must be given.

The Committee is aware of instances where a confused jury has returned logically or legally inconsistent verdicts. (For examples of problems the Committee is seeking to avoid, see *People v. Hoffer*, 106 Ill. 2d 186, 88 Ill. Dec. 20, 478 N.E.2d 335 (1985), *cert. denied*, 474 U.S. 847, 106 S. Ct. 139, 88 L. Ed. 2d 114 (1985) (guilty of murder, voluntary manslaughter, and involuntary manslaughter), *People v. Spears*, 130 Ill. App. 3d 1006, 86 Ill. Dec. 202, 475 N.E.2d 8 (3d Dist. 1985), *judgment affirmed*, 112 Ill. 2d 396, 98 Ill. Dec. 9, 493 N.E.2d 1030 (1986) (guilty of attempt murder, armed violence, and reckless conduct), and *People v. Coleman*, 131 Ill. App. 3d 76, 86 Ill. Dec. 351, 475 N.E.2d 565 (1st Dist. 1985) (guilty of attempt murder and reckless conduct).) To avoid such confusion in future cases, the Committee has expanded the concluding instructions (Instruction 26.01 *et seq.*) to be given to the jury and has made those instructions more specific depending upon the particular charges to be considered by the jury and the relationship of those charges to each other.

As part of the Committee's plan to avoid jury confusion, the Committee has similarly expanded Chapter 2.00. Thus the form of the 2.01 charging instruction should always correlate to the form of the 26.01 concluding instruction. [Example: if Instruction 2.01E is given, then Instruction 26.01E must be given as well.]

The Committee is aware that choosing among the 2.01 *et seq.* instructions at first may seem confusing and difficult. However, the Committee decided that having these options available to cover as many fact situations as possible would ultimately prove to be of great benefit to the bench and bar. Were these options not available, counsel and the court would be required in an appropriate case to concoct modifications of those instructions in IPI-Criminal closest to the case at hand. Devising instructions in the midst of a complex, perhaps hard-fought trial is not a desirable course of action. It is far preferable to permit the court and counsel to choose from among the detailed instructions provided by the Committee to meet almost any fact situation that might arise.

In the 28 instructions that comprise the 2.01 series, the Committee has attempted to provide a particular charging instruction to meet any factual variation present when the jury is to be instructed about one or more of the following areas: second degree murder, involuntary manslaughter, lesser included offenses, the guilty but mentally ill verdict, and the insanity defense.

Only one instruction of the 2.01 series (and its corresponding partner from the 26.01 series) should be appropriate to any given set of facts. The Committee has attempted to anticipate and include all potential factual situations. If, however, the court determines that the Committee has failed to provide an instruction in the 2.01 series that is appropriate to the factual situation of the case on trial, the court should then utilize Instruction 2.01 and modify it as may be needed.

In *People v. Reddick*, 123 Ill. 2d 184, 122 Ill. Dec. 1, 526 N.E.2d 141 (1988), the Illinois Supreme Court changed how a jury should be instructed when it is to consider both murder and voluntary manslaughter as those offenses were defined prior to P.A. 84-1450, which created the offense of second degree murder. (See Committee Note to Instruction 7.02A.) The Committee believes that the instructions contained in parts II and III of the 2.01 series, dealing with first and second degree murder and involuntary manslaughter in various combinations, are fully applicable to murder-voluntary manslaughter cases being tried under the statutes in effect before amendments contained in P.A. 84-1450, with only two slight modifications: (1) any reference in a 2.01 instruction to first degree murder should be changed to murder, and (2) any reference to second degree murder should be changed to voluntary manslaughter.

Guidelines for Choosing Among the 2.01 series Instructions

The 2.01 series has been divided into five parts to reduce the difficulty of finding the appropriate instruction for use in any given factual setting.

PART I. GENERAL CHARGING INSTRUCTION

Introductory Note

Instruction 2.01 is the general instruction concerning the charge against the defendant (with some modifications) that previously appeared in earlier editions of IPI-Criminal. It should be used when none of the 27 other, more specific, instructions from the 2.01 series is applicable.

2.01 The Charge Against The Defendant—Jury Is Not To Be Instructed On Second Degree Murder—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of _____. The defendant[s] [(has) (have)] pleaded not guilty.

Committee Note

Whenever this instruction is given, Instruction 26.01 must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on second degree murder, (2) the jury is to be instructed on a lesser offense, (3) the jury is to be instructed on the insanity defense, or (4) the jury is to be instructed on the guilty but mentally ill verdict.

See Introductory Note at 2.00.

Insert in the blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.03.

PART II. FIRST AND SECOND DEGREE MURDER—NO INVOLUNTARY MANSLAUGHTER**2.01A The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge**

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01A must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed *only* on first and second degree murder.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on some charge other than first degree murder and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01I.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.01.

2.01B The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01B must also be given. This instruction may not be used in conjunction with any other instruction from the § 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on the insanity defense.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01J.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01R, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." See Committee Note to Instruction 26.01B.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not

to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.05.

2.01C The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01C must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 20.01K.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01D The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01D must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01L.

Do *not* use this instruction if the jury is to be instructed on the insanity defense.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01T, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." See Committee Note to Instruction 26.01D.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning

so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01E The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01E must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01M.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01F The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01F must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on the guilty but mentally ill verdict.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01N.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; use instead the first paragraph of Instruction 2.01V, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." See Committee Note to Instruction 26.01F.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not

to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01G The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

Committee Note

Whenever this instruction is given, Instruction 26.01G must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on the insanity defense.

Do *not* use this instruction if the jury is to be instructed on some charge other than first and second degree murder.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01O.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instructions submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.04B.

2.01H The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; (5) not guilty by reason of insanity of second degree murder; (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder.

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01H must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on the guilty but mentally ill verdict, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on involuntary manslaughter; instead, use Instruction 2.01P.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; use instead the first paragraph of Instruction 2.01X, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder and not guilty of second degree murder." See Committee Note to Instruction 26.01H.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity

defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

PART III. FIRST AND SECOND DEGREE MURDER AND INVOLUNTARY MANSLAUGHTER

2.01I The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01I must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, and (2) the jury is to be instructed on involuntary manslaughter.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.06.

2.01J The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty of second degree murder; or (4) guilty of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01J must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on the insanity defense.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01R, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder, second degree murder, and involuntary manslaughter." See Committee Note to Instruction 26.01J.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

Burden of Proof

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01K The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 2.01N must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01K series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on some charge other than first degree murder, second degree murder, and involuntary manslaughter.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01L The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) guilty of first degree murder; or (3) guilty but mentally ill of first degree murder; or (4) guilty of second degree murder; or (5) guilty but mentally ill of second degree murder; or (6) guilty of involuntary manslaughter; or (7) guilty but mentally ill of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01L must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

Do *not* give this instruction if the jury is to be instructed on the insanity defense.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder and involuntary manslaughter. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01T, modifying the first sentence to read: “The defendant[s] [(is) (are)] also charged with”

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant’s request or over the defendant’s objection.

The Committee considered and rejected the idea of making one of the verdict forms read, “not guilty of first degree murder, second degree murder, and involuntary manslaughter.” See Committee Note to Instruction 26.01L.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not

to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

Burden of Proof

2.01M The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01M must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, and (3) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on any charge other than first degree murder, second degree murder, and involuntary manslaughter.

See Introductory Note at 2.00.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01N The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) not guilty by reason of insanity of second degree murder; or (5) guilty of second degree murder; or (6) not guilty by reason of insanity of involuntary manslaughter; or (7) guilty of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01N must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the insanity defense, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on the guilty but mentally ill verdict.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder and involuntary manslaughter. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01AA, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . ."

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder, second degree murder, and involuntary manslaughter." See Committee Note to Instruction 26.01N.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the

co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01O The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

Committee Note

Whenever this instruction is given, Instruction 26.01O must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on the insanity defense.

Do *not* give this instruction if the jury is to be instructed on any other charge.

See Introductory Note at 2.00.

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01P The Charge Against The Defendant—Jury Is To Be Instructed On First And Second Degree Murder And Involuntary Manslaughter—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of first degree murder. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with first degree murder may be found (1) not guilty of first degree murder and not guilty of involuntary manslaughter; or (2) not guilty by reason of insanity of first degree murder; or (3) guilty of first degree murder; or (4) guilty but mentally ill of first degree murder; or (5) not guilty by reason of insanity of second degree murder; or (6) guilty of second degree murder; or (7) guilty but mentally ill of second degree murder; or (8) not guilty by reason of insanity of involuntary manslaughter; or (9) guilty of involuntary manslaughter; or (10) guilty but mentally ill of involuntary manslaughter.

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01P must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on first and second degree murder, (2) the jury is to be instructed on involuntary manslaughter, (3) the jury is to be instructed on the guilty but mentally ill verdict, (4) the jury is to be instructed on the insanity defense, and (5) the jury is to be instructed on some other charge or charges.

See Introductory Note at 2.00.

Insert in the blanks any charge as to which the jury is to be instructed other than first and second degree murder and involuntary manslaughter. The second paragraph should be repeated for each such additional charge other than first and second degree murder and involuntary manslaughter. Only one charge at a time should be referred to in the second paragraph. If the additional charge about which the jury is to be instructed is a greater offense and the jury is also going to be instructed about a lesser offense included within that greater offense, then do not use this second paragraph; instead, use the first paragraph of Instruction 2.01X, modifying the first sentence to read: "The defendant[s] [(is) (are)] also charged with . . ."

The Committee takes no position as to whether the court may instruct the jury on second degree murder without the defendant's request or over the defendant's objection.

The Committee considered and rejected the idea of making one of the verdict forms read, "not guilty of first degree murder, not guilty of second degree murder, and not guilty of involuntary manslaughter." See Committee Note to Instruction 26.01P.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other. In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

PART IV. LESSER INCLUDED OFFENSES**2.01Q The Charge Against The Defendant—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Charge Other Than The Greater And Lesser Included Offenses**

The defendant[s] [(is) (are)] [also] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty [of [greater offense] and not guilty of [lesser offense]]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01Q must also be given. This instruction may not be used in conjunction with any other instruction from the 2.6.01 series.

This instruction should be used whenever the jury is to be instructed on one or more charges which include a lesser offense.

This instruction should not be used under any of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and the lesser included offenses, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, or (4) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

Repeat this instruction for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word “also” for each additional charge, and then also include the bracketed words “of [greater offense] and not guilty of [lesser offense]” for all the charges, inserting the greater and lesser included offenses where indicated.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity

defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the codefendant's instruction should be similarly modified.

Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

2.01R The Charge Against The Defendant—Jury Is To Be Instructed On One Or More Charges Including Lesser Offenses—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Charge Other Than The Greater And Lesser Included Offenses

[1] The defendant[s] [(is) (are)] [also] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty of [lesser offense].

[2] The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty.

Committee Note

Whenever this instruction is given, Instruction 26.01R must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on *one or more charges which include a lesser* offense and (2) the jury is also to be instructed on some other charge or charges.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on the guilty but mentally ill verdict, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a verdict form. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

Repeat paragraph [1] for each separate charge for which the jury is to be instructed on greater and lesser included offenses, including the bracketed word “also” for each additional charge.

Insert in the blanks in paragraph [2] the other charge that will be submitted to the jury, other than the greater and lesser included offenses. Paragraph [2] should refer to only one such charge and should be repeated in its entirety for each such charge.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the codefendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the codefendant's instruction should be similarly modified. Use applicable bracketed material.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

2.01S The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01S must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the insanity defense, (2) the jury is to be instructed on any charge other than the greater and the lesser included offenses, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated the lesser included offense as to which the jury will receive a form of verdict. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury

as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

Burden of Proof

2.01T The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] also charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) guilty of [greater offense]; or (3) guilty but mentally ill of [greater offense]; or (4) guilty of [lesser offense]; or (5) guilty but mentally ill of [lesser offense].

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01T must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the guilty but mentally ill verdict, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the insanity defense, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated the lesser included offense as to which the jury will receive a form of verdict. The clauses which refer to a verdict of guilty of the lesser offense should be repeated for each such lesser offense that the jury will be instructed upon.

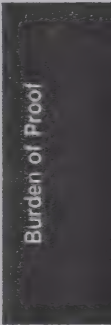
Insert in the blanks in the third paragraph the other charge that will be submitted to the jury other than the greater and lesser included offenses. The third paragraph should refer to only one such charge and should be repeated in its entirety for each such charge.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.



2.01U The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01U must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, and (2) the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on any charge other than the greater and lesser included offenses, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last two clauses of the second paragraph, which refer to a verdict of guilty of a lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

Burden of Proof

2.01V The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) not guilty by reason of insanity of [lesser offense]; or (5) guilty of [lesser offense].

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01V must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, and (3) the jury is to be instructed on some other charge or charges.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks in the third paragraph the other charge that will be submitted to the jury other than the greater and lesser included offenses. The third paragraph should refer to only one such charge and should be repeated in its entirety for each such charge.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last clause of the second paragraph, which refers to a verdict of guilty of the lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

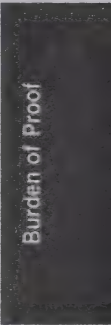
The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly

tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.



2.01W The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is Not To Be Instructed On Any Other Charge

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

Committee Note

Whenever this instruction is given, Instruction 26.01W must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is not to be instructed on any charge other than the greater and lesser included offenses.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on any charge other than the greater and lesser included offenses, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction should be used when the jury is to be instructed on first degree murder and involuntary manslaughter, and the jury is not to be instructed on second degree murder.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last clause of the second paragraph, which refers to a verdict of guilty of the lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: “Defendant John Smith is charged with . . .” Then the co-defendant’s instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

Burden of Proof

2.01X The Charge Against The Defendant—Jury Is To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict—Jury Is To Be Instructed On Some Other Charge Or Charges

The defendant[s] [(is) (are)] charged with the offense of [greater offense]. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with [greater offense] may be found (1) not guilty of [greater offense] and not guilty of [lesser offense]; or (2) not guilty by reason of insanity of [greater offense]; or (3) guilty of [greater offense]; or (4) guilty but mentally ill of [greater offense]; or (5) not guilty by reason of insanity of [lesser offense]; or (6) guilty of [lesser offense]; or (7) guilty but mentally ill of [lesser offense].

The defendant[s] [(is) (are)] also charged with the offense of _____. The defendant[s] [(has) (have)] pleaded not guilty to that charge.

Committee Note

Whenever this instruction is given, Instruction 26.01X must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, (3) the jury is to be instructed on the guilty but mentally ill verdict, and (4) the jury is to be instructed on some other charge or charges.

Do *not* use this instruction if the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

When appropriate, this instruction may be used when the jury is to be instructed on first degree murder and involuntary manslaughter and some other charge or charges as well.

Insert in the blanks as indicated the greater offense specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict.

Insert in the blanks as indicated a lesser included offense as to which the jury will receive a form of verdict. The last two clauses of the second paragraph, which refer to a verdict of guilty of the lesser offense, should be repeated for each such lesser offense that the jury will be instructed upon.

Insert in the blanks in the third paragraph the other charge that will be submitted to the jury other than the greater and lesser included offenses. The third paragraph should refer to only one such charge and should be repeated in its entirety for each such charge.

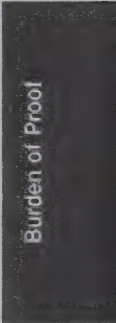
The terms “lesser offense” and “greater offense” which appear in this instruction are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

Select a different instruction from the 2.01 series for each defendant being jointly

tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.



PART V. NO LESSER INCLUDED OFFENSES**2.01Y The Charge Against The Defendant—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is Not To Be Instructed On The Guilty But Mentally Ill Verdict**

The defendant[s] [(is) (are)] charged with the offense[s] of _____. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with _____ may be found (1) not guilty; or (2) not guilty by reason of insanity of _____; or (3) guilty of _____.

Committee Note

Whenever this instruction is given, Instruction 26.01Y must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed on the insanity defense.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on the guilty but mentally ill verdict, (2) the jury is to be instructed on a lesser included offense, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

Insert in the blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict. If the jury is to be instructed on more than one charge, then the third sentence of this instruction should be repeated for each such charge, and the reference to a general not guilty verdict should be changed as well. Under these circumstances, specific not guilty verdicts for each charge should be used.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other. In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with . . ." Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel and should be in the instruction submitted to the jury.

Use applicable bracketed material.

2.01Z The Charge Against The Defendant—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is Not To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of _____. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with _____ may be found (1) not guilty; or (2) guilty of _____; or (3) guilty but mentally ill of _____.

Committee Note

Whenever this instruction is given, Instruction 26.01Z must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under any of the following circumstances: (1) the jury is to be instructed on a lesser included offense, (2) the jury is to be instructed on the insanity defense, or (3) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

Insert in the blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict. If the jury is to be instructed on more than one charge, then the third sentence of this instruction should be repeated for each such charge, and the reference to a general not guilty verdict should be changed as well. Under these circumstances, specific not guilty verdicts for each charge should be used.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel. These numbers should be in the instruction as it is submitted to the jury.

Use applicable bracketed material.

2.01AA The Charge Against The Defendant—Jury Is Not To Be Instructed On A Lesser Included Offense—Jury Is To Be Instructed On The Insanity Defense—Jury Is To Be Instructed On The Guilty But Mentally Ill Verdict

The defendant[s] [(is) (are)] charged with the offense[s] of _____. The defendant[s] [(has) (have)] pleaded not guilty. Under the law, a person charged with _____ may be found (1) not guilty; or (2) not guilty by reason of insanity of _____; or (3) guilty of _____; or (4) guilty but mentally ill of _____.

Committee Note

Whenever this instruction is given, Instruction 6.01AA must also be given. This instruction may not be used in conjunction with any other instruction from the 26.01 series.

This instruction should be used whenever (1) the jury is to be instructed on the insanity defense, and (2) the jury is to be instructed on the guilty but mentally ill verdict.

This instruction should *not* be used under either of the following circumstances: (1) the jury is to be instructed on a lesser included offense, or (2) the jury is to be instructed on second degree murder.

See Introductory Note at 2.00.

Insert in the first blank all offenses specifically charged in the indictment, information, or complaint as to which the jury will receive a form of verdict. If the jury is to be instructed on more than one charge, then the third sentence of this instruction should be repeated for each such charge, and the reference to a general not guilty verdict should be changed as well. Under these circumstances, specific not guilty verdicts for each charge should be used.

Select a different instruction from the 2.01 series for each defendant being jointly tried if (1) the charges against the co-defendants are not identical, or (2) the insanity defense or the guilty but mentally ill verdict is applicable to one defendant but not to the other defendant(s). In either instance, modify this instruction at the beginning so that it reads as follows: "Defendant John Smith is charged with" Then the co-defendant's instruction should be similarly modified.

The numbers appearing in parentheses were added to provide clarity for the jury as well as for the court and counsel. These numbers should be in the instruction as it is submitted to the jury.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.04A.

2.02 Information—Indictment—Complaint Not Evidence

The charge[s] against the defendant[s] in this case [(is) (are)] contained in a document called the [(information) (indictment) (complaint)]. This document is the formal method of charging the defendant[s] and placing the defendant[s] on trial. It is not any evidence against the defendant[s].

Committee Note

By the time the jury is instructed, this proposition has been communicated to them in *voir dire* examination and closing argument. Nevertheless, it should be reinforced by the court's charge.

The Committee has received reports from trial judges that the use of the term "information" in this instruction without clarification (as it appears in the bound volume of IPI-Criminal (3d ed.)) has sometimes confused juries. Because "information" is a term unfamiliar to most laymen, the Committee has rephrased this instruction to make clear that an information is merely a charging document.

The Committee also decided to delete the last clause of the last sentence of this instruction—"and does not create any inference of guilt"—because the Committee believed that clause both redundant and unclear to a large percentage of jurors.

Use applicable bracketed material.

2.03 Presumption Of Innocence—Reasonable Doubt—Burden Of Proof Generally

[(The) (Each)] defendant is presumed to be innocent of the charge[s] against him. This presumption remains with [(him) (each defendant)] throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that he is guilty.

The State has the burden of proving the guilt of [(the) (each)] defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. [(The) (A)] defendant is not required to prove his innocence.

Committee Note

The firm commitment to presumed innocence which can be overcome only by proof beyond a reasonable doubt is the touchstone of American criminal jurisprudence. This instruction must be given in *all* cases except when the only charges for the jury to consider are first and second degree murder. Under those circumstances, give Instruction 2.03A instead of this instruction.

When insanity is an issue, give this instruction and Instruction 2.03B.

For an example of the use of this instruction, see Sample Sets 27.02, 27.03, 27.04A, 27.06, and 27.07.

2.03A Presumption Of Innocence—Reasonable Doubt—Burden Of Proof In First Degree-Second Degree Murder Cases

The defendant is presumed to be innocent of the charge against him of first degree murder. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving that the defendant is guilty of first degree murder, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence.

If the State proves beyond a reasonable doubt that the defendant is guilty of first degree murder, the defendant then has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder, and not guilty of first degree murder. In deciding whether a mitigating factor is present, you should consider all of the evidence bearing on this question. [The defendant is not required to present any evidence in order to establish the existence of a mitigating factor.]

Committee Note

This instruction is to be given in place of Instruction 2.03 when the jury is to be instructed on both first and second degree murder under P.A. 84-1450. However, if there is any other charge before the jury, then give *both* this instruction and Instruction 2.03, with the court reading Instruction 2.03 first.

P.A. 84-1450 took effect on July 1, 1987. See *People v. Shumpert*, 126 Ill. 2d 344, 128 Ill. Dec. 18, 533 N.E.2d 1106 (1989).

Give Instruction 4.18, defining the phrase "preponderance of the evidence."

Use bracketed material in the third paragraph of Instruction 2.03A at the defendant's request when the only evidence of second degree murder has come out during the prosecution's case.

For an example of the use of this instruction, see Sample Sets 27.01, 27.04B, 27.05, and 27.06.

2.03B Presumption Of Innocence—Reasonable Doubt—Burden Of Proof—Insanity

The defense of insanity has been presented during the trial. The burden of proof is on the defendant to prove by [(clear and convincing) (a preponderance of the)] evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the propositions of [each of] the offense[s] charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense[s] with which he is charged.

Committee Note

720 ILCS 5/6-2(e) (1992) (formerly Ill. Rev. Stat. ch. 38, § 6-2(e) (1991)), amended by P.A. 89-404, effective August 20, 1995.

When the defense of insanity is an issue, give this instruction in addition to either Instruction 2.03 or Instruction 2.03A.

P.A. 89-404, effective August 20, 1995, modified the insanity defense by eliminating the volitional prong, which provided that a person is insane if, as a result of a mental disease or defect, he lacks substantial capacity to conform his conduct to the requirements of law. P.A. 89-404 also changed the burden on the defendant to establish the insanity defense from “preponderance of the evidence” to “clear and convincing evidence.” Accordingly, for offenses allegedly committed on or after August 20, 1995, use the bracketed phrase “clear and convincing.”

For offenses allegedly occurring before August 20, 1995, give Instruction 4.18, defining the phrase “preponderance of the evidence.” For offenses allegedly occurring on or after August 20, 1995, give Instruction 4.19, defining the phrase “clear and convincing evidence.”

This instruction has been revised to be consistent with a modification adopted in the Third Edition of IPI-Criminal. In the third sentence, the phrase “of the elements” has been modified by substituting the word “propositions” for the word “elements.” This change reflects the fact that the jury is told that the State must prove propositions, not elements, in order to sustain a charge.

2.04 Failure Of Defendant To Testify

The fact that [(a) (the)] defendant[s] did not testify must not be considered by you in any way in arriving at your verdict.

Committee Note

This instruction should be given *only* at the defendant's request and, then, it *must* be given. See *People v. Greben*, 352 Ill. 582, 186 N.E. 162 (1933); *People v. Borneman*, 66 Ill. App. 2d 251, 213 N.E.2d 52 (2d Dist. 1966).

The Committee substituted the word "must" for the word "should" that appeared in the Second Edition's version of Instruction 2.04. It sought to give greater emphasis to the jury's obligation not to consider the defendant's failure to testify.

For an example of the use of this instruction, see Sample Set 27.04A.

2.05 Definition Of Reasonable Doubt

Committee Note

The Committee recommends that no instruction be given defining the term “reasonable doubt.” In *People v. Malmenato*, 14 Ill. 2d 52, 61, 150 N.E.2d 806, 811 (1958), the Illinois Supreme Court stated:

“Reasonable doubt is a term which needs no elaboration and we have so frequently discussed the futility of attempting to define it that we might expect the practice to be discontinued. (*People v. Schuele*, 326 Ill. 366, 157 N.E. 215; *People v. Rogers*, 324 Ill. 224, 154 N.E. 909.) . . .”

See also People v. Bowlby, 51 Ill. App. 2d 51, 201 N.E.2d 136 (4th Dist. 1964).

2.06 Bill Of Particulars

Committee Note

The Committee recommends that no instruction be given on this subject. The question whether the evidence complies with a bill of particulars (when one is granted) is for the court. The bill of particulars does not go to the jury, but it does limit the character of evidence. *McDonald v. People*, 126 Ill. 150, 18 N.E. 817 (1888); *People v. Parker*, 355 Ill. 258, 189 N.E. 352 (1934).

2.07 Venue (Before August 11, 1995)

The State must prove beyond a reasonable doubt that the offense[s] of _____ occurred in _____ County, Illinois.

Committee Note

P.A. 89-288, effective August 11, 1995, amends Section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Because previous case law held that venue is an element of every offense that the State had to prove beyond a reasonable doubt, this instruction should continue to be used in cases in which the alleged offense was committed before August 11, 1995, and the court determines that venue is a material issue.

Give Instruction 2.08.

Give this instruction at the request of either party, or *sua sponte* by the trial court if the court determines venue is a material issue in the case. See *People v. Adams*, 161 Ill. 2d 333, 341, 204 Ill. Dec. 290, 294, 641 N.E.2d 514, 518 (1994), wherein the court held that “venue is a material allegation which must be proved by the State beyond a reasonable doubt along with the other elements of an offense.”

If venue is a contested issue, then the question of venue must be submitted to the jury for resolution. *People v. Turner*, 179 Ill. App. 3d 510, 128 Ill. Dec. 159, 534 N.E.2d 179 (2d Dist. 1989). Therefore, when there is a material question of fact as to whether an offense occurred in the county charged in the complaint, indictment, or information, this instruction should be given.

When the offense occurs in a moving vehicle, see *People v. McClain*, 60 Ill. App. 3d 320, 17 Ill. Dec. 628, 376 N.E.2d 774 (4th Dist. 1978). For a discussion of venue generally, see *People v. Lambert*, 195 Ill. App. 3d 314, 141 Ill. Dec. 932, 552 N.E.2d 300 (4th Dist. 1990), for guidance.

This instruction is not included in Chapter 24–25.00 because venue is not a defense.

Insert in the first blank the offense or offenses that have venue issues and in the second blank the county charged in the complaint, indictment, or information.

2.07X Venue (As Of August 11, 1995)

Committee Note

P.A. 89-288, effective August 11, 1995, amends Section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Thus, no instruction on venue should be given in cases in which the alleged offense was committed on or after August 11, 1995.

2.08 Issues In Venue (Before August 11, 1995)

_____ *Proposition:* That the offense of _____ occurred in
_____ County.

Committee Note

P.A. 89-288, effective August 11, 1995, amends section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Because previous case law held that venue was an element of every offense that the State had to prove beyond a reasonable doubt, this instruction should continue to be used in cases in which the alleged offense was committed before August 11, 1995, and the court determines that venue is a material issue.

Give Instruction 2.07.

Give this instruction at the request of either party, or sua sponte by the trial court if the court determines venue is a material issue in the case. See the Committee Note to Instruction 2.07.

Give this instruction as the final proposition in the issues instruction for the offense charged.

Insert in the first blank the number of the proposition, in the second blank the offense that has a venue issue, and in the third blank the county charged in the complaint, indictment, or information.

2.08X Issues In Venue (As Of August 11, 1995)**Committee Note**

P.A. 89-288, effective August 11, 1995, amends Section 1-6(a) of the Criminal Code (720 ILCS 5/1-6(a) (West 1994)) to provide that the State is not required to prove venue. Thus, no instruction on venue should be given in cases in which the alleged offense was committed on or after August 11, 1995.

Chapter 3.00

PARTICULAR TYPES OF EVIDENCE

SYNOPSIS

INTRODUCTION

- 3.01 Date Of Offense Charged**
- 3.02 Definition Of Circumstantial Evidence**
- 3.03 Flight**
- 3.04 Motive**
- 3.05 Separate Consideration For Each Defendant**
- 3.06–3.07 Statements By Defendant**
- 3.08 Statements—Multiple Defendants**
- 3.09 Dying Declaration**
- 3.10 Right Of Attorney Or Attorney's Investigator To Interview Witness**
- 3.11 Prior Inconsistent Statements**
- 3.12 Impeachment Of A Witness By Prior Conviction**
- 3.12X Proof Of Prior Conviction/Prior Violent Act/Reputation—Victim—Self-Defense**
- 3.13 Impeachment—Defendant—Offenses**
- 3.13X Proof Of Prior Convictions—Defendant—Admissibility**
- 3.14 Proof Of Other Offenses Or Conduct**
- 3.15 Circumstances Of Identification**
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INTRODUCTION

As a general proposition, the Committee disapproves of instructions which comment on particular types of evidence, *e.g.*, flight. We agree with those cases holding that

“Courts are under a general obligation to avoid giving instructions which unduly emphasize one part of the evidence in a case, and are not required to give an instruction that would provide the jury with no more guidance than that available to them by application of common sense.” *People v. McClellan*, 62 Ill. App. 3d 590, 595, 378 N.E.2d 1221 (1st Dist. 1978).

There are, however, certain exceptions to the general disapproval. This Chapter contains those exceptions. Each of the following instructions should be used only in cases where it is applicable.

Introduction Approved October 17, 2014

3.01 Date Of Offense Charged

The [(indictment) (information) (complaint)] states that the offense charged was committed [(on or about)] _____. If you find the offense charged was committed, the State is not required to prove that it was committed on the particular date charged.

Committee Note

Instruction and Committee Note Approved October 17, 2014

See People v. Vaughn, 390 Ill. 360, 61 N.E.2d 546 (1945); *People v. Bote*, 379 Ill. 245, 40 N.E.2d 55 (1942).

This instruction should be given only when there is a variance between the date alleged and the evidence, and all dates are within the period of limitations. It should not be given if the State has filed a bill of particulars stating the date of the crime.

The filing of a bill of particulars does not necessarily preclude the use of this instruction. Give this instruction whenever the time variance is immaterial. *See People v. Suter*, 292 Ill. App. 3d 358, 685 N.E.2d 1023 (4th Dist. 1997).

Insert in the blank the date of the alleged offense.

Use applicable bracketed material.

3.02 Definition Of Circumstantial Evidence

Circumstantial evidence is the proof of facts or circumstances which give rise to a reasonable inference of other facts which tend to show the guilt or innocence of [(the) (a)] defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at your verdict.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should not be given when all of the evidence is direct. *People v. Gardner*, 4 Ill. 2d 232, 122 N.E.2d 578 (1954).

For an example of the use of this instruction, see Sample Sets 27.02, 27.05, 27.06, and 27.07.

3.03 Flight

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject.

Although evidence of flight is a proper subject of argument, its probative value is questionable. *See Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963); *see also United States v. Jackson*, 572 F.2d 636 (7th Cir. 1978). The use of flight instructions has frequently been found to constitute error. *See, e.g., People v. Henderson*, 39 Ill. App. 3d 502, 348 N.E.2d 854 (3d Dist. 1976) (Stouder, J., specially concurring) (collecting cases). For these reasons, the Committee believes that a flight instruction should not be given.

3.04 Motive**Committee Note**

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject.

Although motive or lack of motive is a proper subject of argument, it is not an element which must be proved by the State. An instruction which defines the word “motive” and then explains “its immateriality for a purpose other than one probative of intent, only creates confusion far greater than any clarification an instruction might accomplish.” Federal Jury Instructions of the Seventh Circuit 23 (1980). No instruction should be given. *People v. Harrod*, 140 Ill. App. 3d 96, 488 N.E.2d 316 (4th Dist. 1986).

3.05 Separate Consideration For Each Defendant

You should give separate consideration to each defendant. Each is entitled to have his case decided on the evidence and the law which applies to him.

[Any evidence which was limited to [(one defendant) (some defendants)] should not be considered by you as to [(any) (the)] other defendant[s].]

Committee Note

Instruction and Committee Note Approved October 17, 2014

Give this instruction only when there is more than one defendant.

Give the second paragraph when appropriate.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.03.

3.06–3.07 Statements By Defendant

You have before you evidence that [(the) (a)] defendant made [a] statement[s] relating to the offense[s] charged in the [(indictment) (information) (complaint)]. It is for you to determine [whether the defendant made the statement[s], and, if so,] what weight should be given to the statement[s]. In determining the weight to be given to a statement, you should consider all of the circumstances under which it was made.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The bracketed phrase in the second sentence should be deleted only when the defendant admits making all the material statements attributed to him.

The Committee decided that whether a statement is an admission, confession, or false exculpatory statement is a legal conclusion that ought not to be communicated to the jury. This instruction avoids the complications that ensue when a judge characterizes a statement. See *People v. Horton*, 65 Ill. 2d 413, 358 N.E.2d 1121 (1976); *People v. Sovetsky*, 323 Ill. 133, 153 N.E. 615 (1926); *People v. Oliver*, 50 Ill. App. 3d 665, 365 N.E.2d 618 (1st Dist. 1977).

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.01.

3.08 Statements—Multiple Defendants

A statement made by one defendant may not be considered by you against any other defendant.

Committee Note

Instruction and Committee Note Approved October 17, 2014

Give this instruction in conjunction with Instructions 3.06–3.07. It applies when a statement by one defendant in a multiple defendant case has been admitted only against the declarant. The judge should distinguish this situation from that where a defendant's words are admitted against all defendants on the theory that the words were in furtherance of a conspiracy or joint venture.

3.09 Dying Declaration

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on a dying declaration.

Whether a statement is admissible as a dying declaration is a question of law to be decided by the trial court. *People v. Tilley*, 406 Ill. 398, 94 N.E.2d 328 (1950); *People v. Hubbs*, 401 Ill. 613, 83 N.E.2d 289 (1948). The significance of this evidence is a proper subject of argument to the jury.

3.10 Right Of Attorney Or Attorney's Investigator To Interview Witness

It is proper for an [(attorney) (attorney's investigator)] to interview or attempt to interview a witness for the purpose of learning the testimony the witness will give.

[However, the law does not require a witness to speak to [(an attorney) (an attorney's investigator)] before testifying.]

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should not be given unless the jury has heard testimony that a witness was interviewed or was asked to be interviewed by an attorney or an attorney's investigator.

The bracketed paragraph should not be given unless the jury has heard testimony that a witness refused to speak to an attorney or to an attorney's investigator prior to that witness testifying at trial.

This instruction is not intended to preclude argument concerning inferences to be drawn from a witness's refusal or willingness to be interviewed before testifying.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.02.

3.11 Prior Inconsistent Statements

The believability of a witness may be challenged by evidence that on some former occasion he [(made a statement) (acted in a manner)] that was not consistent with his testimony in this case. Evidence of this kind [ordinarily] may be considered by you only for the limited purpose of deciding the weight to be given the testimony you heard from the witness in this courtroom.

[However, you may consider a witness's earlier inconsistent statement as evidence without this limitation when

[1] the statement was made under oath at a [(trial) (hearing) (proceeding)].

[or]

[2] the statement narrates, describes, or explains an event or condition the witness had personal knowledge of;

and

[a] the statement was written or signed by the witness.

[or]

[b] the witness acknowledged under oath that he made the statement.

[or]

[c] the statement was accurately recorded by a tape recorder, videotape recording, or a similar electronic means of sound recording.]

It is for you to determine [whether the witness made the earlier statement, and, if so] what weight should be given to that statement. In determining the weight to be given to an earlier statement, you should consider all of the circumstances under which it was made.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The materiality of the earlier statement is a question of law for the court.

This instruction attempts to deal with the situation in which the jury has been permitted to hear separate earlier inconsistent statements that were offered for different purposes. One earlier inconsistent statement was offered for the limited purpose of attacking believability, while the other was offered as substantive evidence under Section 115-10.1. This instruction seeks to distinguish between these two statements.

When both kinds of earlier inconsistent statements are used for both purposes this instruction should be given in its entirety at the close of the trial. The bracketed word "ordinarily" in the first paragraph should be used in the instruction as given.

When earlier inconsistent statements are used *solely* for the limited purpose of attacking believability, and not as substantive evidence under Section 115-10.1, then only the first and last paragraphs, without bracketed material, should be used at the close of trial.

The Committee believes that all evidence is substantive unless limited to a non-substantive purpose, such as impeachment. That is why the Committee recommends that the first and last paragraphs of this instruction be given orally to the jury without bracketed material when the earlier inconsistent statement is being offered for a limited, non-substantive purpose. This instruction should then be given again in the final, written instructions.

There is no need to use this instruction when the earlier inconsistent statement is being offered as substantive evidence under Section 115-10.1 and no earlier inconsistent statement is being offered for use only for the purpose of impeachment.

Use the bracketed phrase “whether the witness made the earlier statement” in the last paragraph whenever the making of the statement is an issue in the case. If the making of the statement is an issue, then this phrase should be used whether the statement is being offered for substantive use or impeachment use.

Do not use numbers or letters unless paragraphs [1] and [2] are both given.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.02.

3.12 Impeachment Of A Witness By Prior Conviction

Evidence that a witness has been convicted of an offense may be considered by you only as it may affect the believability of the witness.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should be given only when there has been impeachment of a witness by proof of a prior conviction. See *People v. Montgomery*, 47 Ill. 2d 510, 268 N.E.2d 695 (1971); *People v. Jacobs*, 51 Ill. App. 3d 455, 366 N.E.2d 1064 (4th Dist. 1977).

3.12X Proof Of Prior Conviction/Prior Violent Act/Reputation—Victim—Self-Defense

In this case the State must prove beyond a reasonable doubt the proposition that the defendant was not justified in using the force which he used. You have [(heard testimony) (received evidence)] of _____'s [(prior conviction of a violent crime) (prior acts of violence) (reputation for violence)]. It is for you to determine whether _____ [(was convicted) (committed those acts) (had this reputation)]. If you determine that _____ [(was convicted) (committed those acts) (had this reputation)] you may consider that evidence in deciding whether the State has proved beyond a reasonable doubt that the defendant was not justified in using the force which he used.

Committee Note

Instruction and Committee Note Approved October 17, 2014

Give this instruction only when evidence of the victim's prior conviction for a crime of violence has been admitted pursuant to *People v. Lynch*, 104 Ill. 2d 194, 470 N.E.2d 1018 (1984); IRE 405(b).

Insert in the appropriate blanks the name of the victim and the victim's prior conviction(s) for a crime of violence.

The Committee devised this instruction to address the nature of evidence regarding a victim's prior conviction for a crime of violence when the defendant claims self-defense. In *People v. Lynch*, 104 Ill. 2d 194, 470 N.E.2d 1018 (1984), the Illinois Supreme Court discussed the situation in which the defendant claimed to have acted in self-defense, and held that evidence of the victim's prior convictions for crimes of violence was admissible to show the victim's aggressive and violent character.

No need exists to limit the *Lynch* evidence for self-defense purposes. Instead, once evidence of the victim's prior convictions for a crime of violence is admitted, it need not satisfy *People v. Montgomery*, 47 Ill. 2d 510, 268 N.E.2d 695 (1971), to be properly considered because it may affect the victim's credibility as well. This is because *Montgomery*, which contains the threshold test of admissibility for convictions used solely to impeach a witness, becomes moot once the evidence of the *Lynch* convictions is admitted substantively. *People v. Hester*, 271 Ill. App. 3d 954, 959, 649 N.E.2d 1351 (4th Dist. 1995).

Insert in the blanks the name of the victim.

Use applicable bracketed material.

3.13 Impeachment—Defendant—Offenses

Evidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense with which he is charged.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should be given only at the request of the defendant when there has been impeachment of the defendant by proof of a prior conviction. *People v. Brandon*, 283 Ill. App. 3d 358, 669 N.E.2d 1253 (4th Dist. 1996); *see People v. Montgomery*, 47 Ill. 2d 510, 268 N.E.2d 695 (1971); *People v. Williams*, 173 Ill. 2d 48, 670 N.E.2d 638 (1996) (affirming *Montgomery* as establishing the test for the admissibility of prior convictions for impeachment purposes).

When an essential element of the charged offense is that the defendant has been previously convicted of committing a prior offense, use Instruction 3.13X instead of this instruction. *See People v. Bailey*, 201 Ill. App. 3d 904, 559 N.E.2d 509 (2d Dist. 1990) (defendant charged with unlawful possession of weapon by felon).

For an example of the use of this instruction, see Sample Set 27.02.

3.13X Proof Of Prior Convictions—Defendant—Admissibility

Ordinarily, evidence of a defendant's prior conviction of an offense may [be considered by you only as it may affect his believability as a witness and must] not be considered by you as evidence of his guilt of the offense with which he is charged.

However, in this case, because the State must prove beyond a reasonable doubt the proposition that the defendant has previously been convicted of _____, you may [also] consider evidence of defendant's prior conviction of the offense of _____ [only] for the purpose of determining whether the State has proved that proposition.

Committee Note

Instruction and Committee Note Approved October 17, 2014

This instruction should be given *only* when an element of the charged offense is that the defendant has been previously convicted of committing a prior offense.

Use the bracketed phrase “[be considered by you only as it may affect his believability as a witness and must]” in the first paragraph of this instruction and use the bracketed word “[also]” in the second paragraph of this instruction only when the defendant testifies at his trial.

If the defendant does not testify at his trial, this instruction should be given *only* at the defendant's request; otherwise, this instruction should *not* be given. If the defendant does request that this instruction be given and he does not testify at trial, use the bracketed word “[word]” in the second paragraph of the instruction. Do not use any other bracketed material.

The Committee created this instruction to deal with the admissibility of evidence regarding a defendant's prior conviction when this prior conviction is an essential element of the charged offense. In *People v. Bailey*, 201 Ill. App. 3d 904, 559 N.E.2d 509 (2d Dist. 1990), the court addressed this situation when the State charged the defendant with unlawful possession of a weapon by a felon and provided a modified Instruction 3.13 to cover the defendant's testimony at his trial. In *Bailey*, the court stated that “[i]n effect, [use of Instruction 3.13, by itself,] would have made it impossible to convict defendant of unlawful use of weapons by a felon.” *Bailey*, 201 Ill. App. 3d at 906, 559 N.E.2d 509. See Instructions 18.07 and 18.08, defining the offense of unlawful possession of a weapon by a felon. Accordingly, this instruction provides that when the defendant has been previously convicted of committing a prior offense and he testifies at his trial, evidence of his prior conviction is admissible as substantive evidence of the prior conviction and also as impeachment evidence against the defendant.

Insert in the blanks the defendant's prior conviction.

Use applicable bracketed material.

3.14 Proof Of Other Offenses Or Conduct

[1] Evidence has been received that the defendant[s] [(has) (have)] been involved in [(an offense) (offenses) (conduct)] other than [(that) (those)] charged in the [(indictment) (information) (complaint)].

[2] This evidence has been received on the issue[s] of the [(defendant's) (defendants')] [(identification) (presence) (intent) (motive) (design) (knowledge) (_____)] and may be considered by you only for that limited purpose.

[3] It is for you to determine [whether the defendant[s] [(was) (were)] involved in [(that) (those)] [(offense) (offenses) (conduct)] and, if so,] what weight should be given to this evidence on the issue[s] of _____.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Illinois Supreme Court has made clear that evidence of other crimes is admissible if it is relevant to establish any fact material to the case other than propensity to commit crime. *People v. Stewart*, 105 Ill. 2d 22, 62, 473 N.E.2d 840 (1984); IRE 404(b). Accordingly, the Committee determined that this instruction should be broadened by including a blank within the alternatives provided to explain to the jury why the evidence is being admitted. If the court concludes that none of the specific alternatives provided in paragraph [2] of this instruction fits the facts of the case before it, then the court should set forth in the blank in this instruction whatever explanation does fit the evidence.

The issue(s) on which the evidence which is the subject of this instruction has been received *must* be the same issue(s) in both paragraph [2] and paragraph [3]. Accordingly, insert in the blank in paragraph [3] whatever issue(s) that appear in paragraph [2].

On occasion evidence might be received for a limited purpose that is not technically “an offense,” but for which this instruction might still be useful. Examples are *People v. Carr*, 114 Ill. App. 2d 370, 252 N.E.2d 912 (1st Dist. 1969) (in prosecution for unlawful possession and sale of a narcotic drug, State permitted to adduce evidence defendant had rented his apartment, the scene of the sale, under an assumed name); *People v. Jackson*, 145 Ill. App. 3d 626, 495 N.E.2d 1207 (1st Dist. 1986) (evidence of defendant’s status and activities as a gang member admissible on issue of motive); *People v. Branion*, 47 Ill. 2d 70, 265 N.E.2d 1 (1970) (evidence of defendant’s extra-marital affair and marital discord probative of murder). To meet such circumstances, the word “conduct” has been added in paragraph [1] as an alternative to the word “offense.”

Paragraph [3] makes clear to the jury that the limited evidence which is the subject of this instruction is still to be weighed by them; they are free to accept or reject it as they see fit. When the defense concedes that the defendant performed the conduct or committed the offense that is the subject of this instruction, *the bracketed portion of paragraph [3] should not be given.*

Whenever this instruction is given, all three paragraphs (in whatever form is applicable) must be given to the jury.

This instruction may be given both (1) during trial, either just before or immediately after the jury is to hear the evidence in question, *see People v. Roe*, 228 Ill. App. 3d 628, 592 N.E.2d 596 (4th Dist. 1992), and (2) at the end of the trial, before jury deliberations. *Roe* quoted with approval the following paragraph of this Committee Note. *See Roe*, 228 Ill. App. 3d at 636, 592 N.E.2d 596.

At the time the evidence which is the subject of this instruction is first presented to the jury, the Committee recommends that an oral instruction should be given to explain to the jury the limited purpose of this evidence, unless the defendant objects to that instruction.

If this instruction is given just before the jury is to hear the evidence in question, paragraphs [1] and [2] should be modified to begin "Evidence will be received . . ." and "This evidence will be received . . ."

In *People v. Denny*, 241 Ill. App. 3d 345, 360-61, 608 N.E.2d 1313 (4th Dist. 1993), the court wrote the following:

"Because of the significant prejudice to a defendant's case that the admission of other crimes evidence usually risks, we hold that trial courts should not only instruct the jury in accordance with IPI Criminal 2d No. 3.14 at the close of the case, but also orally from the bench (unless defendant objects) at the time the evidence is first presented to the jury."

This instruction is not applicable to proof of prior convictions admitted on the issue of believability. See Instruction 3.13.

Care must be taken to state the proper limited purpose for the evidence. *See People v. King*, 165 Ill. App. 3d 464, 518 N.E.2d 1309 (2d Dist. 1988).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.05.

3.15 Circumstances Of Identification

When you weigh the identification testimony of a witness, you should consider all the facts and circumstances in evidence, including, but not limited to, the following:

- [1] The opportunity the witness had to view the offender at the time of the offense.
- [2] The witness's degree of attention at the time of the offense.
- [3] The witness's earlier description of the offender.
- [4] The level of certainty shown by the witness when confronting the defendant.
- [5] The length of time between the offense and the identification confrontation.

Committee Note

Amendments to Committee Note Approved July 28, 2017

This new instruction simply lists factors well-established by case law. *Manson v. Brathwaite*, 432 U.S. 98, 97 S. Ct. 2243, 53 L. Ed. 2d 140 (1977); *People v. Manion*, 67 Ill. 2d 564, 367 N.E.2d 1313 (1977); *People v. Slim*, 127 Ill. 2d 302, 537 N.E.2d 317 (1989) The Committee believes this instruction would serve the interests of justice by offering guidance in an area that contains complexities and pitfalls not readily apparent to some jurors.

Give this instruction when identification is an issue.

See Instruction 3.15A when the identification evidence involves law-enforcement conducted line-up procedures as set forth in Article 107A of the Code of Criminal Procedure (725 ILCS 5/107A-0.1 *et seq.*).

Give numbered paragraphs that are supported by the evidence.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

The jury should be instructed on only the factors with any support in the evidence. Other factors should be omitted. Do not use “or” or “and” between the factors where more than one factor is used. *People v. Herron*, 215 Ill. 2d 167, 191–92, 830 N.E.2d 467 (2005).

For an example of the use of this instruction, see Sample Set 27.02.

3.15A Circumstances Of Law Enforcement Line-Up Identification

You have before you evidence that a witness made an identification of [(the defendant) (another individual)] following a [(live) (photographic)] line-up conducted by [a] law enforcement [(agency) (agencies)] relating to the offense[s] charged in this case. It is for you to determine [whether the witness made an identification, and, if so,] what weight should be given to that evidence. In determining the weight to be given to this evidence, you should consider all of the facts and circumstances under which the identification was made, including, but not limited to, the procedures [(used) (or) (not used)] by the law enforcement [(agency) (agencies)].

Committee Note

725 ILCS 5/107A-0.1, *et seq.* (West 2020).

Give this instruction only when there is evidence that a witness made an identification pursuant to a law enforcement live or photographic line-up procedure. In those circumstances, this instruction would typically follow Instruction 3.15.

P.A. 98-104, § 10, effective January 1, 2015, significantly changed the statutory requirements for law enforcement identification procedures, and provides that “when warranted by the evidence, the jury shall be instructed that it may consider all the facts and circumstances including compliance or noncompliance with this Section to assist in its weighing of the identification testimony of an eyewitness.” 725 ILCS 5/107A-2(j)(2). Where the trial court has determined that such an instruction is warranted by the evidence, give this instruction.

The bracketed phrase in the second sentence should be included when there is some evidence disputing the making of an identification as described by section 107A-2 (725 ILCS 5/107A-2).

Use applicable bracketed material.

3.15B Law Enforcement Identification Opinion Evidence

You have before you evidence that a law enforcement officer made an identification of [(the defendant) (an individual) (an object)] from a [(video recording) (photograph)]. It is for you to determine what weight, if any, should be given to that evidence. In determining the weight to be given to this evidence, you should not draw any inference from the fact that the witness is a law enforcement officer.

Committee Note

Instruction and Note Approved January 26, 2018

Give this instruction when a law enforcement officer provides identification testimony regarding a video recording or photograph and the evidence includes that the witness is a law enforcement officer.

In *People v. Thompson*, 2016 IL 118667, 49 N.E.3d 393, the Illinois Supreme Court held that a witness's identification of the defendant from a video recording or photograph constitutes lay witness opinion evidence pursuant to Illinois Rule of Evidence 701. The court further held that when the witness is a law enforcement officer and that fact is disclosed to the jury, the trial court "should properly instruct the jury, before the testimony and in the final charge to the jury," regarding that evidence. *Thompson*, 2016 IL 118667, ¶ 59, 49 N.E.3d at 407.

In *People v. Gharrett*, 2016 IL App (4th) 140315, 53 N.E.3d 332, the court applied *Thompson* to a law enforcement officer's opinion testimony identifying an object in a surveillance video recording.

The Committee believes that giving this Instruction does not require giving Instruction 3.15.

Use applicable bracketed material.

3.16 Evidence Of Defendant’s Reputation

The defendant has introduced evidence of his reputation for [(truth and veracity) (morality) (chastity) (honesty and integrity) (being a peaceful and law-abiding citizen) (_____)]. This evidence may be sufficient when considered with the other evidence in the case to raise a reasonable doubt of the defendant’s guilt. However, if from all the evidence in the case you are satisfied beyond a reasonable doubt of the defendant’s guilt, then it is your duty to find him guilty, even though he may have a good reputation for [(truth and veracity) (morality) (chastity) (honesty and integrity) (being a peaceful and law-abiding citizen) (_____)].

Committee Note

Instruction and Committee Note Approved October 17, 2014

The instruction comports with the decision in *People v. Hrdlicka*, 344 Ill. 211, 176 N.E. 308 (1931); *see also* IRE 405(a).

3.17 Testimony Of An Accomplice

When a witness says he was involved in the commission of a crime with the defendant, the testimony of that witness is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in the case.

Committee Note

The Committee decided that accomplice testimony represents an area of evidence that requires judicial comment. See *People v. Wilson*, 66 Ill. 2d 346, 362 N.E.2d 291 (1977). The term “accomplice” was eliminated from the instruction.

In *People v. Rivera*, 166 Ill. 2d 279, 292, 652 N.E.2d 307 (1995), the Illinois Supreme Court held that an accomplice’s testimony should be cautiously scrutinized regardless of which side he testifies for. As a result, the Committee now recommends that this instruction be given any time an accomplice testifies.

Where a witness who participated in the crime with which a defendant is charged testifies that the defendant did not participate in that crime, the trial court may modify this Instruction with the phrase “if a witness testified that he participated in the crime with which the defendant is charged.” *People v. Fane*, 2021 IL 126715 (2021) (holding that the trial court did not abuse its direction modifying the Instruction in this way).

The appellate court has held that trial counsel renders ineffective assistance of counsel when counsel fails to tender Instruction 3.17 under certain circumstances. *People v. Campbell*, 275 Ill. App. 3d 993, 999, 657 N.E.2d 87 (5th Dist. 1995). The defendant is entitled to have Instruction 3.17 given to the jury (1) if the witness, rather than the defendant, could have been the person responsible for the crime, or (2) if the witness admits being present at the scene of the crime and could have been indicted either as a principal or under a theory of accountability, but denies involvement. See *People v. Montgomery*, 254 Ill. App. 3d 782, 790, 626 N.E.2d 1254 (1st Dist. 1993); *People v. Lewis*, 240 Ill. App. 3d 463, 467, 609 N.E.2d 673 (1st Dist. 1992).

For an example of the use of this instruction, see Sample Set 27.02.

3.18 Weighing Expert Testimony

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject. The believability of witnesses in general is the subject of Instruction 1.02. No separate instruction is needed in this area. *People v. Everist*, 52 Ill. App. 2d 73, 201 N.E.2d 655 (1st Dist. 1964).

In *People v. Cloutier*, 156 Ill. 2d 483, 509–10, 622 N.E.2d 774 (1993), the supreme court noted that the Committee “specifically advises against any comment on the weight to be given [expert] testimony.” Relying upon the above paragraph, the court held that the trial court did not err in refusing to give the defendant’s proposed instruction. *Cloutier*, 156 Ill. 2d at 510, 622 N.E.2d 774.

3.19 Weighing Police Testimony

Committee Note

Instruction and Committee Note Approved October 17, 2014

The Committee recommends that no instruction be given on this subject. The believability of witnesses in general is the subject of Instruction 1.02. No separate instruction is needed in this area. *Accord People v. Springs*, 2 Ill. App. 3d 817, 277 N.E.2d 764 (2d Dist. 1972); *see also People v. Smith*, 67 Ill. App. 3d 672, 385 N.E.2d 44 (1st Dist. 1978); *People v. Uselding*, 39 Ill. App. 3d 677, 350 N.E.2d 283 (4th Dist. 1976); *People v. Taylor*, 8 Ill. App. 3d 727, 290 N.E.2d 342 (2d Dist. 1972).

In *People v. Cloutier*, 156 Ill. 2d 483, 509–10, 622 N.E.2d 774 (1993), the supreme court noted that the Committee “specifically advises against any comment on the weight to be given [expert] testimony.” Relying upon the Committee Note to Instruction 3.18, the court held that the trial court did not err in refusing to give the defendant’s proposed instruction. *Cloutier*, 156 Ill. 2d at 510, 622 N.E.2d 744. The Committee believes that the same principle applies to the weight to be given police testimony.

3.20 Use Of Transcripts Of Tape-Recorded Conversations

[(A) (An)] [(electronic) (_____)] recording has been admitted into evidence. In addition to the [(electronic) (_____)] recording you are being given a transcript of the [(electronic) (_____)] recording. The transcript only represents what the transcriber believes was said on the [(electronic) (_____)] recording, and merely serves as an aid when you listen to the [(electronic) (_____)] recording. The [(electronic) (_____)] recording, and not the transcript, is the evidence. If you perceive a conflict between the [(electronic) (_____)] recording and the transcript, the [(electronic) (_____)] controls.

Committee Note

Instruction and Committee Note Approved October 17, 2014

The jury should be instructed on the role of tape-recordings and other forms of recording including but not limited to video recording, and transcripts. *See People v. Hunley*, 313 Ill. App. 3d 16, 37–38, 728 N.E.2d 1183 (2000); *People v. Criss*, 307 Ill. App. 3d 888, 899–900, 719 N.E.2d 776 (1999). The instruction should be given during the trial when a tape-recording or other form of recording is admitted. While a tape-recording or other form of recording should not be treated differently than any other evidentiary exhibit, the question of whether a tape-recording or other form of recording and transcript should be sent to the jury along with other exhibits at the close of the case is a matter for the trial court's discretion. *Hunley*, 313 Ill. App. 3d at 38, 728 N.E. 2d 1183. If the court sends the tape or other form of recording and transcript to the jury at the close of the case, this instruction should be given along with the other instructions.

3.21 Weighing Informant Testimony

Committee Note

The Committee recommends that no instruction be given on this subject.

While the credibility of a government informant is a question for the jury, courts have held that Instruction 1.02 properly informs the jury of its responsibility to judge the credibility of each witness, and that a special jury instruction about informants is contrary to Illinois law. *People v. Trice*, 2017 IL App (4th) 150429, ¶¶ 44–45, 87 N.E.3d 1087, 1096–97; *People v. Evans*, 209 Ill. 2d 194, 808 N.E.2d 939 (2004). In *Trice*, the court additionally noted that the Committee generally “disapproves of instructions which comment on particular types of evidence.” *Trice*, 2017 IL App (4th) 150429, ¶ 46, 87 N.E.3d at 1097 (quoting the Instruction to Chapter 3).

Chapter 4.00

DEFINITIONS OF CERTAIN WORDS

SYNOPSIS

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INTRODUCTION

The instructions in this chapter define certain words used in the instructions defining various offenses. These definitions should be given following the instruction in which the defined word is used.

The necessity for additional definitions may arise. When the court gives one of these instructions, it should use prefatory language such as, "The word _____ means . . .," "The term _____ means . . .," or "The phrase _____ means . . ." When necessary definitions are not found in this chapter, use the appropriate statutory definitions.

4.01 Definition Of Act

The word “act” includes a failure or omission to take action.

Committee Note

720 ILCS 5/2-2 (West 2013).

4.02 Definition Of Conduct

The word “conduct” means an act or a series of acts and the accompanying mental state.

Committee Note

720 ILCS 5/2-4 (West 2013).

4.03 Definition Of Dwelling Place

The term “dwelling place” means:

[1] a[n] [(building or portion of a building) (tent) (vehicle) (enclosed space)] which is used or intended for use as a human habitation, home, or residence.

[or]

[2] a[n] [(house) (apartment) (mobile home) (trailer) (living quarters)] in which at the time of the alleged offense the [(owners) (occupants)] actually reside, or in their absence, intend within a reasonable period of time to reside.

Committee Note

720 ILCS 5/2-6 (West 2013).

Give paragraph [2] when used in conjunction with residential burglary. The phrase “in their absence” does not imply that the owner or occupant must have previously resided there. *People v. Pearson*, 183 Ill. App. 3d 72, 538 N.E.2d 1202 (5th Dist. 1989). See Committee Note to Instruction 14.13.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.04 Definition Of Felony

Committee Note

720 ILCS 5/2-7 (West 2013).

The Committee believes that determining whether an offense is a felony is a question of law for the court rather than a question of fact for the jury. Accordingly, no instruction defining the word “felony” is necessary. When the word “felony” appears, the court should substitute the name of the particular felony in that instruction.

4.05 Definition Of Forcible Felony**Committee Note**

720 ILCS 5/2-8 (West 2013).

The Committee believes that determining whether an offense is a “forcible felony” is a question of law for the court rather than a question of fact for the jury. Accordingly, no instruction defining the words “forcible felony” is necessary. When the words “forcible felony” appears, the court should substitute the name of the particular forcible felony in that instruction.

4.06 Definition Of Misdemeanor

Committee Note

720 ILCS 5/2-11 (West 2013).

The Committee believes that determining whether an offense is a “misdemeanor” is a question of law for the court rather than a question of fact for the jury. Accordingly, no instruction defining the word “misdemeanor” is necessary. When the word “misdemeanor” appears, the court should substitute the name of the particular misdemeanor in that instruction.

4.07 Definition Of Offense**Committee Note**

720 ILCS 5/2-12 (West 2013).

The Committee no longer believes it is necessary to instruct on the definition of the word “offense” because the jury would never be called upon to make such a factual determination. When the word “offense” appears, the court should substitute the name of the particular offense in that instruction.

4.08 Definition Of Peace Officer

The term “peace officer” means:

[1] any person who, by virtue of his office or public employment, is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.

[or]

[2] [(officers) (agents) (employees of the federal government)] commissioned by federal statute to make arrests for violations of federal criminal laws including, but not limited to, all criminal investigators of

[a] the United States Department of Justice, the Federal Bureau of Investigation, the Drug Enforcement Agency, and the Department of Immigration and Naturalization.

[or]

[b] the United States Department of the Treasury, the Secret Service, the Bureau of Alcohol, Tobacco and Firearms, and the Customs Service.

[or]

[c] the United States Internal Revenue Service.

[or]

[d] the United States General Services Administration.

[or]

[e] the United States Postal Service.

[or]

[f] all United States Marshals or Deputy United States Marshals whose duties involve the enforcement of federal criminal laws.

Committee Note

720 ILCS 5/2-13 (West 2013).

When applicable, give paragraph [2] in cases concerning unlawful use of weapons.

See Arrington v. City of Chicago, 45 Ill. 2d 316, 259 N.E.2d 22 (1970).

Use applicable paragraphs and bracketed material.

The brackets, numbers, and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.09 Definition Of Penal Institution

The term “penal institution” means a penitentiary, state farm, reformatory, prison, jail, house of correction, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

Committee Note

720 ILCS 5/2-14 (West 2013).

See *People v. Marble*, 91 Ill. 2d 242, 437 N.E.2d 641 (1982); *People v. Simmons*, 88 Ill. 2d 270, 430 N.E.2d 1032 (1981).

4.10 Definition Of Person

The word “person” means an individual, natural person, public or private corporation, government, partnership, unincorporated association, or other entity.

Committee Note

720 ILCS 5/2-15 (West 2013), amended by P.A. 97-597, effective January 1, 2012.

4.10A Definition Of Physically Handicapped Person

The term “physically handicapped person” means a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

Committee Note

720 ILCS 5/2-15a (West 2013).

4.11 Definition Of Public Employee

The term “public employee” means a person, other than a public officer, who is authorized to perform any official function on behalf of, and is paid by, the State or any of its political subdivisions.

Committee Note

720 ILCS 5/2-17 (West 2013).

4.12 Definition Of Public Officer

The term “public officer” means a person who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions.

Committee Note

720 ILCS 5/2-18 (West 2013).

4.12A Definition Of Special Government Agent

The term “special government agent” means a person who is directed, retained, designated, appointed, or employed, with or without compensation, by or on behalf of a statewide executive branch constitutional officer to make any written or oral communication by any person that imparts or requests material information or makes a material argument regarding potential action concerning regulatory, quasi-adjudicatory, investment, or licensing matters pending before or under consideration by the agency.

Committee Note

5 ILCS 420/4A-101(l) (West 2019); *see also* 5 ILCS 430/5-50 or 5 ILCS 100/5-165 (West 2019).

4.13 Definition Of Reasonable Belief

The phrases “reasonable belief” or “reasonably believes” mean that the person concerned, acting as a reasonable person, believes that the described facts exist.

Committee Note

720 ILCS 5/2-19 (West 2013).

For an example of the use of this instruction, see Sample Set 27.03.

4.14 Omission As Voluntary Act

A voluntary act includes an omission to perform a duty which the law imposes on a person and which that person is physically capable of performing.

Committee Note

720 ILCS 5/4-1 (West 2013).

Where the voluntariness of an act is an issue, the jury should be told in the Issues Instruction that it must find the act was voluntary.

This instruction should be given only if an omission is an issue.

See People v. Grant, 71 Ill. 2d 551, 377 N.E.2d 4 (1978).

4.15 Possession As Voluntary Act

Possession is a voluntary act if the person knowingly procured or received the thing possessed, or was aware of his control of the thing for a sufficient time to have been able to terminate his possession.

Committee Note

720 ILCS 5/4-2 (West 2013).

This instruction should be given only if voluntariness is an issue.

See People v. Grant, 71 Ill. 2d 551, 377 N.E.2d 4 (1978).

4.16 Possession

[1] Possession may be actual or constructive. A person has actual possession when he has immediate and exclusive control over a thing. A person has constructive possession when he lacks actual possession of a thing but he has both the power and the intention to exercise control over a thing [either directly or through another person].

[2] If two or more persons share the immediate and exclusive control or share the intention and the power to exercise control over a thing, then each person has possession.

Committee Note

When there is no evidence that the possession was either constructive or joint, as, for example, when the substance or object was found on the defendant's person, it generally will be unnecessary to instruct the jury regarding the definition of possession. *See People v. Rentsch*, 167 Ill. App. 3d 368, 521 N.E.2d 213 (2d Dist. 1988).

Give paragraph [1] only when there is an issue as to whether the defendant was in constructive possession.

Give paragraph [2] only when there is an issue of joint possession. *See People v. Pittman*, 216 Ill. App. 3d 598, 575 N.E.2d 967 (4th Dist. 1991).

Use applicable paragraphs and bracketed material when appropriate.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.07.

4.17 Dangerous Weapon

An object or an instrument which is not inherently dangerous may be a dangerous weapon depending on the manner of its use and the circumstances of the case.

Committee Note

This definition is appropriate in cases where the alleged weapon is not inherently dangerous. The definition is from *People v. Skelton*, 83 Ill. 2d 58, 414 N.E.2d 455 (1980). Do not give this instruction when the alleged weapon is inherently dangerous.

Do not give this instruction in armed violence cases, aggravated kidnapping cases, or in other cases where the term “dangerous weapon” is expressly defined by statute. Do not give this instruction in prosecutions of weapon violations under Chapter 720, Article 24.

For an example of the use of this instruction, see Sample Set 27.02.

4.18 Definition Of Preponderance Of The Evidence

The phrase “preponderance of the evidence” means whether, considering all the evidence in the case, the proposition on which the defendant has the burden of proof is more probably true than not true.

Committee Note

For an example of the use of this instruction, see Sample Sets 27.04A and 27.04B.

4.19 Definition Of Clear And Convincing Evidence

The phrase “clear and convincing evidence” means that degree of proof which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition on which the defendant has the burden of proof is true.

Committee Note

P.A. 89-404, effective August 20, 1995, changed the burden of proof on a defendant asserting the insanity defense from “preponderance of the evidence” to “clear and convincing evidence.” (See 720 ILCS 5/6-2(e) (West 1994).) Because the insanity defense frequently arises in first degree murder cases and because juries in such cases often are instructed to consider the applicability of the second degree murder statute (in which the defendant has the burden of proving the existence of a mitigating factor by a preponderance of the evidence), the Committee believes that an instruction defining “clear and convincing evidence” must be used in such cases in order to provide guidance regarding the difference between “clear and convincing evidence” and “preponderance of the evidence” (as defined in Instruction 4.18).

Note that in Instructions 24-25.01E, 24-25.01F, 24-25.01G, and 24-25.01H, the jury receives instructions containing references to both “clear and convincing evidence” and “preponderance of the evidence.” The Committee is aware that Instructions 24-25.01E, 24-25.01F, 24-25.01G, and 24-25.01H also contain the phrase “proof beyond a reasonable doubt” for which no instruction exists. See Instruction 2.05. However, (1) Illinois case law prohibits an instruction defining that phrase (see *People v. Speight*, 153 Ill. 2d 365, 374, 606 N.E.2d 1174, 1177 (1992); *People v. Failor*, 271 Ill. App. 3d 968, 970–71, 649 N.E.2d 1342 (4th Dist. 1995)), and (2) that phrase is much better known to—and understood by—non-lawyers than either “clear and convincing evidence” or “preponderance of the evidence.”

Because the Committee found no Illinois case or statute directly on point, the Committee derived this instruction from *State v. King*, 158 Ariz. 419, 763 P.2d 239 (1988).

4.20 Definition Of Streetgang Or Gang Or Organized Gang Or Criminal Street Gang

The term [(streetgang) (gang) (organized gang) (criminal street gang)] means any combination, confederation, alliance, network, conspiracy, understanding, or other similar conjoining, in law or in fact, of three or more persons with an established hierarchy that, through its membership or through the agency of any member, engages in a course or pattern of criminal activity.

Committee Note

740 ILCS 147/10 (West 2013).

4.21 Definition Of Streetgang Member Or Gang Member

The term [(streetgang) (gang)] member means any person who actually and in fact belongs to a gang, and any person who knowingly acts in the capacity of an agent for or accessory to, or is legally accountable for, or voluntarily associates himself with a course or pattern of gang-related criminal activity, whether in a preparatory, executory, or cover-up phase of any activity, or who knowingly performs, aids, or abets any such activity.

Committee Note

740 ILCS 147/10 (West 2013).

4.22 Definition Of Streetgang Related Or Gang-Related

The term [(streetgang related) (gang-related)] means any criminal activity, enterprise, pursuit, or undertaking directed by, ordered by, authorized by, consented to, agreed to, requested by, acquiesced in, or ratified by any gang leader, officer, or governing or policy-making person or authority, or by any agent, representative, or deputy of any such officer, person, or authority

[1] with the intent to increase the gang's size, membership, prestige, dominance, or control in any geographical area.

[or]

[2] with the intent to provide the gang with any advantage in, or any control or dominance over any criminal market sector, including but not limited to, the manufacture, delivery, or sale of controlled substances or cannabis; arson or arson-for-hire; traffic in stolen property or stolen credit cards; traffic in prostitution, obscenity, or pornography; or that involves robbery, burglary, or theft.

[or]

[3] with the intent to exact revenge or retribution for the gang or any member of the gang.

[or]

[4] with the intent to obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang.

[or]

[5] with the intent to otherwise directly or indirectly cause any benefit, aggrandizement, gain, profit or other advantage whatsoever to or for the gang, its reputation, influence, or membership.

Committee Note

740 ILCS 147/10 (West 2013).

Use applicable bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.23 Definition Of School Speed Zone

The term “school speed zone” means [(a school zone) (a roadway on public school property) (any public thoroughfare where children pass going to and from school)] on a school day between the hours of 7 a.m. and 4 p.m. when school children are present and so close thereto that a potential hazard exists because of the close proximity of the motorized traffic and where appropriate signs have been posted and maintained upon streets and highways which give proper due warning that a school zone is being approached and which indicate the school zone and the maximum speed limit in effect during school days when school children are present.

Committee Note

625 ILCS 5/11-605 (West 2013).

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.24 Definition Of Proximate Cause

[(For the offense of _____, the) (The)] term “proximate cause” means any cause which, in the natural or probable sequence, produced the [(great bodily harm) (permanent disability) (permanent disfigurement) (death of another person) (death of the child) (injury to a peace officer)]. [It need not be the only cause, nor the last or nearest cause. It is sufficient if it concurs with some other cause which in combination with it, causes the [(great bodily harm) (permanent disability) (permanent disfigurement) (death of another person) (death of the child) (injury to a peace officer)].]

Committee Note

720 ILCS 5/8-4(c)(1)(D) (West 2022).

720 ILCS 5/9-1.2(d)(4) (West 2022).

720 ILCS 5/10-2(a)(8) (West 2022).

720 ILCS 5/12-4.3(b)(3) (West 2022).

720 ILCS 5/12-11(a)(5) (West 2022).

720 ILCS 5/12-14(a)(10) (West 2022).

720 ILCS 5/12-21.6(d) (West 2022).

720 ILCS 5/12C-5(d) (West 2022).

720 ILCS 5/18-2(a)(4) (West 2022).

720 ILCS 5/18-4(a)(6) (West 2022).

720 ILCS 5/31-1(a-7) (West 2022).

720 ILCS 5/33A-2(c) (West 2022).

730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2022).

In *People v. Martin*, 266 Ill. App. 3d 369, 378–79, 640 N.E.2d 638, 645 (4th Dist. 1994), the court held that an instruction very similar to this instruction was properly given when a DUI is subject to enhancement pursuant to Section 11-501(d)(3). The Committee based this instruction upon IPI Criminal Instruction 23.28A, but modified it for use in this context.

This definition should be given when causation is an issue in the above listed statutory offenses or sentencing enhancement factors.

The first part of this instruction should be given where the evidence shows that the sole cause of the injury or death was the conduct of the defendant. The instruction in its entirety, however, should be given when there is evidence of a concurring or contributing cause of the injury or death.

In the statutes listed above, the language regarding “proximate cause” is variously stated as follows:

(1) 720 ILCS 5/8-4(c)(1)(D), 720 ILCS 5/9-1.2(d)(4), 720 ILCS 5/10-2(a)(8), 720 ILCS 5/12-4.3(b)(3), 720 ILCS 5/12-14(a)(10), and 730 ILCS 5/5-8-1(a)(1), use the wording “proximately caused.”

(2) 720 ILCS 5/12-11(a)(5), 720 ILCS 5/18-2(a)(4), 720 ILCS 5/18-

4(a)(6), and 720 ILCS 5/33A-2(c), use the wording “proximately causes.”

(3) 720 ILCS 5/12-21.6(d) and 720 ILCS 5/12C-5(d), use the wording “a proximate cause.”

(4) 720 ILCS 5/31-1(a-7), uses the wording “the proximate cause.”

The Committee believes there is no significance to the variation in the phraseology that affects the applicability of this definition with one possible exception. When using 720 ILCS 5/31-1(a-7) (the proximate cause) the Committee directs the user to *Sibenaller v. Milschewski*, 379 Ill. App. 3d 717, 721–22, 884 N.E.2d 1215 (2d Dist. 2008), where the appellate court discusses a principle of statutory construction when “the” is used instead of “a.” The Committee takes no position as to whether the bracketed second sentence should be given when defining “the proximate cause.”

This instruction should not be given when causation is an issue in intentional, knowing or reckless homicide cases. Instruction 7.15 should be given under those circumstances.

This instruction should not be given when causation is an issue in felony murder cases. Instruction 7.15A should be given under those circumstances.

This instruction should not be given when causation is an issue in driving under the influence cases. Instruction 23.28A should be given under those circumstances.

Use applicable bracketed material.

When instructing for offenses with different definitions of causation, such as involuntary manslaughter (720 ILCS 5/9.3) and felony endangerment of the life or health of a child (720 ILCS 5/12C-5(d)), use the bracketed material naming the appropriate offense.

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

4.25 Definition Of Intoxicating Compound

The term “intoxicating compound” means:

[1] any compound, liquid, or chemical containing [(toluol) (hexane) (trichloroethylene) (acetone) (toluene) (ethyl acetate) (methyl ethyl ketone) (trichloroethane) (isopropanol) (methyl isobutyl ketone) (methyl cellosolve acetate) (cyclohexanone) (the alkaloid atropine) (the alkaloid hyoscyamine) (the alkaloid scopolamine)].

[or]

[2] any substance [(ingested) (breathed) (inhaled) (drunk)] by a person for the purpose of inducing a condition of [(intoxication) (stupefaction) (depression) (giddiness) (paralysis) (irrational behavior)].

[or]

[3] any substance [(ingested) (breathed) (inhaled) (drunk)] by a person which in any manner [(changes) (distorts) (disturbs)] the auditory, visual, or mental processes.

Committee Note

720 ILCS 690/1 (West 2013).

Use applicable definition.

Use applicable bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

4.26 Definition Of Correctional Institution Employee

The phrase “correctional institution employee” means a person employed by a penal institution.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.27 Definition Of Sports Venue

The term “sports venue” means a publicly or privately owned sports or entertainment arena, stadium, community or convention hall, special events center, or amusement facility, or a special events center in a public park, during the 12 hours before or after the sanctioned sporting event.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.28 Definition Of Domestic Violence Shelter

The phrase “domestic violence shelter” means any building or other structure used to provide shelter or other services to victims or to the dependent children of victims of domestic violence pursuant to the Illinois Domestic Violence Act of 1986 or the Domestic Violence Shelters Act, or any place within 500 feet of such a building or other structure in the case of a person who is going to or from such a building or other structure.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(i) (West 2016).

4.29 Definition Of Physically Handicapped Person

The phrase “physically handicapped person” means a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.30 Definition Of Emergency Medical Technician

An “emergency medical technician” includes a paramedic, ambulance driver, first aid worker, hospital worker, or other medical assistance worker.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.31 Definition Of Utility Worker

A “utility worker” means any of the following:

- (1) A person employed by a public utility.
- (2) An employee of a municipally owned utility.
- (3) An employee of a cable television company.
- (4) An employee of an electric cooperative.
- (5) An independent contractor or an employee of an independent contractor working on behalf of a cable television company, public utility, municipally owned utility, or electric cooperative.
- (6) An employee of a telecommunications carrier, or an independent contractor or employee of an independent contractor working on behalf of a telecommunications carrier.
- (7) An employee of a telephone or telecommunications cooperative, or an independent contractor or an employee of an independent contractor working on behalf of a telephone or telecommunications cooperative.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

“Public utility” is defined in the Public Utilities Act at 220 ILCS 5/3-105 (West 2016) if that definition becomes an issue in (1) or (5).

“Electric cooperative” is defined in the Public Utilities Act at 220 ILCS 5/3-119 (West 2016) if that definition becomes an issue in (4) or (5).

“Telecommunications carrier” is defined in the Public Utilities Act at 220 ILCS 5/13-202 (West 2016) if that definition becomes an issue in (6).

“Telephone or telecommunications cooperative” is defined in the Public Utilities Act at 220 ILCS 5/13-212 (West 2016) if that definition becomes an issue in (7).

4.32 Definition Of Transit Employee

A “transit employee” means a driver, operator, or employee of any transportation facility or system engaged in the business of transporting the public for hire.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.33 Definition Of Transit Passenger

A “transit passenger” means a passenger of any transportation facility or system engaged in the business of transporting the public for hire, including a passenger using any area designated by a transportation facility or system as a vehicle boarding, departure, or transfer location.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-0.1 (West 2016).

4.34 Definition Of Machine Gun For Use In Aggravated Battery—Based On Use Of A Firearm

The words “machine gun” mean any weapon, which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot without manually reloading by a single function of the trigger.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(i) and 720 ILCS 5/24-1 (West 2016).

4.35 Definition Of Air Rifle

An “air rifle” means and includes any air gun, air pistol, spring gun, spring pistol, B-B gun, paint ball gun, pellet gun or any implement that is not a firearm which impels a breakable paint ball containing washable marking colors or, a pellet constructed of hard plastic, steel, lead or other hard materials with a force that reasonably is expected to cause bodily harm.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/24.8-0.1 (West 2016).

4.36 Definition Of Armed With A Firearm

A person is considered armed with a firearm with he carries on or about his person, or is otherwise armed with, a firearm.

Committee Note

Instruction and Committee Note Approved April 29, 2016

720 ILCS 5/2-3.6 (West 2016), added by P.A. 91-404, effective January 1, 2000.

720 ILCS 5/2-3.6 provides this definition except as otherwise provided in a specific section.

4.37 Definition Of Personally Discharging A Firearm

A person is considered to have personally discharged a firearm when he, while armed with a firearm, [(knowingly) (intentionally)] fires a firearm causing the ammunition projectile to be forcefully expelled from the firearm.

Committee Note

Instruction and Committee Note Approved April 29, 2016

720 ILCS 5/2-15.5 (West 2016), added by P.A. 91-404, effective January 1, 2000.

4.38 Definition Of Tattoo

The word “tattoo” means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin.

Committee Note

Instruction and Committee Note Approved April 4, 2014

720 ILCS 5/12C-35 (West 2013), formerly 720 ILCS 5/12-10 (West 2006), amended and renumbered as § 12C-35 by P.A. 97-1109, § 1-5, effective January 1, 2013.

4.39 Definition Of Pierce

The word “pierce” means to make a hole in the body in order to insert or allow the insertion of any ring, hoop, stud, or other object for the purpose of ornamentation of the body. The word “body” includes the oral cavity.

Committee Note

Instruction and Committee Note Approved April 4, 2014

720 ILCS 5/12C-40 (West 2013), formerly 720 ILCS 5/12-10.1 (West 2006), amended and renumbered as § 12C-40 by P.A. 97-1109, § 1-5, effective January 1, 2013.

4.40 Definition Of Property Of Another

The term “property of another” means a building or other property, whether real or personal, in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender may also have an interest in the building or property.

Committee Note

Instruction and Committee Note Approved December 1, 2017

720 ILCS 5/20-1(a) (West 2017).

Chapter 5.00

MENTAL STATE, ACCOUNTABILITY, AND RESPONSIBILITY

SYNOPSIS

- 5.01 Recklessness—Wantonness**
- 5.01A Intent**
- 5.01B Knowledge—Willfulness**
- 5.01C Actual Knowledge**
- 5.02 Negligence**
- 5.02A Other Mental States**
- 5.03 Accountability**
- 5.03A Accountability—Felony Murder**
- 5.04 Responsibility For Act Of Another—Withdrawal**
- 5.05 Defendant's Responsibility For Act Of Another—Actor Not Legally Responsible**
- 5.06 Defendant's Responsibility For Act Of Another—Actor Not Prosecuted, Etc.**
- 5.07 Corporate Responsibility—Act Of Agent**
- 5.08 Corporate Responsibility—Authorized Acts**
- 5.09 Corporate Responsibility—Defense**
- 5.10 Definition Of High Managerial Agent**
- 5.11 Personal Responsibility Of Corporate Agent**
- 5.12 Definition Of Digital Signature**
- 5.13 Definition Of Electronic Signature**
- 5.14 Definition Of Signature Device**
- 5.15 Definition Of "False Document" or "Document That Is False"**

5.01 Recklessness—Wantonness

A person [(is reckless) (acts recklessly)] when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

[An act performed recklessly is performed wantonly.]

Committee Note

720 ILCS 5/4-6 (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 4-6 (1991)).

See *People v. Baier*, 54 Ill. App. 2d 74, 203 N.E.2d 633 (1st Dist. 1964).

The bracketed second paragraph is for use in conjunction with offenses including a mental state of “wantonness.” In such cases, also give the bracketed second paragraph defining that term.

When wantonness is an issue, Section 4-6 requires the trial court to determine whether the statute using that term “clearly requires another meaning.” If so, the jury should be instructed accordingly.

Use applicable bracketed material.

5.01A Intent

A person [(intends) (acts [(intentionally) (with intent)])] to accomplish a result or engage in conduct when his conscious objective or purpose is to accomplish that result or engage in that conduct.

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/4-4 (West 2016).

The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request. *See People v. Powell*, 159 Ill. App. 3d 1005, 512 N.E.2d 1364 (1st Dist. 1987), for the general proposition that the words “intentionally” and “knowingly” have a plain meaning within the jury’s common understanding. If given, it should only be given when the result or conduct at issue is the result or conduct described by the statute defining the offense.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.07.

5.01B Knowledge—Willfulness

[1] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the nature or attendant circumstances of his conduct when he is consciously aware that his conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that the fact exists.

[2] A person [(knows) (acts knowingly with regard to) (acts with knowledge of)] the result of his conduct when he is consciously aware that that result is practically certain to be caused by his conduct.

[3] [Conduct performed knowingly or with knowledge is performed willfully.]

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/4-5 (West 2016), amended by P.A. 96-710, effective January 1, 2010.

The Committee takes no position as to whether this definition should be routinely given in the absence of a specific jury request. *See People v. Powell*, 159 Ill. App. 3d 1005, 512 N.E.2d 1364 (1st Dist. 1987), for the general proposition that the words “intentionally” and “knowingly” have a plain meaning within the jury’s common understanding. If given, it should only be given when the result or conduct at issue is the result or conduct described by the statute defining the offense.

In cases where the instruction is given, use paragraph [1] if the offense is defined in terms of prohibited conduct. Use paragraph [2] if the offense is defined in terms of a prohibited result. If both conduct and result are at issue, use *both* paragraphs [1] and [2]. *See People v. Lovelace*, 251 Ill. App. 3d 607, 622 N.E.2d 859 (2d Dist. 1993), where the trial court committed reversible error by giving the jury only paragraph [1], and not both paragraphs [1] and [2], when both conduct and result were at issue.

The bracketed third paragraph is for use in conjunction with offenses including a mental state of “willfulness.” In such cases, give the bracketed third paragraph defining that term. Also give the first or second paragraph, or both, as appropriate.

When willfulness is an issue, Section 4-6 requires the trial court to determine whether the statute using that word “clearly requires another meaning.” If so, the jury should be instructed accordingly.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

5.01C Actual Knowledge

Actual knowledge is direct and clear knowledge, that is, knowledge of such information as would lead a reasonable person to inquire further.

Committee Note

In *People v. Hinton*, 402 Ill. App. 3d 181, 931 N.E.2d 769 (3d Dist. 2010), the appellate court held that section 12-30(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/12-30(a)(2) (West 2010) (Violation of an Order of Protection) mandates that a defendant have acquired actual knowledge of the order of protection. Proof by the State of constructive knowledge is insufficient.

5.02 Negligence

A person [(is negligent) (acts negligently)] when that person fails to be aware of a substantial and unjustifiable risk that circumstances exist or that a result will follow, and that failure is a substantial deviation from the standard of care that a reasonable person would exercise in the situation.

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/4-7 (West 2016), amended by P.A. 96-710, effective January 1, 2010.

Use applicable bracketed material.

5.02A Other Mental States**Committee Note**

Committee Note Approved October 28, 2016

In certain cases it may be appropriate to define mental states other than those defined in this Chapter. *See* 720 ILCS 5/4-4 and 4-5 (West 2016).

5.03 Accountability

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of [(an) (the)] offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of [(an) (the)] offense.

[The word “conduct” includes any criminal act done in furtherance of the planned and intended act.]

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-2(c) (West 2016), amended by P.A. 96-710, effective January 1, 2010.

Use the bracketed word “an” and use the bracketed paragraph when the offense is different than the planned and intended offense, but done in furtherance of it. *People v. Kessler*, 57 Ill. 2d 493, 315 N.E.2d 29 (1974); *People v. Terry*, 99 Ill. 2d 508, 460 N.E.2d 746 (1984). *See also People v. Taylor*, 199 Ill. App. 3d 933, 557 N.E.2d 917 (4th Dist. 1990), for a recent clarification of the “common design” rule as discussed by the Illinois Supreme Court in *Terry*.

When this instruction is given, *ordinarily* insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition of the issues instruction for the offense charged. *See also* Instructions 5.05 and 5.06.

Note, however, that for some offenses, it will be inappropriate to insert that phrase in some or all of the propositions. For instance, in a prosecution for the offense of calculated criminal drug conspiracy based upon the theory that the defendant received something of value greater than \$500 as a result of the offense, the State must prove that the defendant himself received that amount of money. *People v. Holmes*, 41 Ill. App. 3d 585, 353 N.E.2d 396 (3d Dist. 1976). *See* Instruction 17.15 and Committee Note thereto. The Third Proposition in the issues instruction for that offense must read: “That the defendant obtained something of value greater than \$500 from such delivery or agreement.” It *cannot* read: “That the defendant, or one for whose conduct he was legally responsible, obtained something of value greater than \$500 from such delivery or agreement.” *See also People v. Griffin*, 247 Ill. App. 3d 1, 616 N.E.2d 1242 (1st Dist. 1993), holding that accountability language should not have been inserted into the aggravated criminal sexual assault issues instruction where the age of the person who actually penetrated the victim defines whether that crime ever occurred. *See* Instruction 11.58B.

Other statutes would appear to require that particular conduct be committed by the defendant personally or that a status that is an element of the offense pertain to the defendant himself. Whenever accountability language is to be inserted in an issues instruction, caution should be exercised to assure that accountability language is not used in any proposition that involves such conduct or status.

For an example of the use of this instruction, *see* Sample Sets 27.02 and 27.03.

The three instructions given, in addition to 5.03, are set forth below as modified

by the Committee to be consistent with style, language and form of IPI-Criminal Instructions:

- (1) A parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so.
- (2) Actual physical presence at the commission of a crime is not a requirement for legal responsibility.
- (3) Intent to promote or facilitate the commission of an offense may be shown by evidence that the defendant shared a criminal intent of the principal or evidence that there was a common criminal design.

5.03A Accountability—Felony Murder

To sustain the charge of first degree murder, it is not necessary for the State to show that it was or may have been the original intent of the defendant or one for whose conduct he is legally responsible to kill the deceased, _____.

It is sufficient if the jury believes from the evidence beyond a reasonable doubt that the defendant and one for whose conduct he is legally responsible combined to do an unlawful act, such as to commit _____, and that the deceased was killed by one of the parties committing that unlawful act.

Committee Note*Instruction and Committee Note Approved October 28, 2016*

Give this instruction only in addition to—not in lieu of—Instruction 5.03.

In *People v. Ramey*, 151 Ill. 2d 498, 536–38, 603 N.E.2d 519 (1992), the supreme court approved the above instruction, which the trial court gave along with Instruction 5.03. In *Ramey*, the State charged defendant and his alleged accomplice with murder (based in part upon felony murder), home invasion, aggravated unlawful restraint, and possession of a stolen motor vehicle. The blank in the second paragraph of the above instruction read “home invasion.” The supreme court in *Ramey* upheld the use of this instruction, holding that “we agree with the State *** that the [above] instruction was explanatory and it served to clarify the concept of felony murder.” *Ramey*, 151 Ill. 2d at 537, 603 N.E.2d at 535.

Insert in the blank in the first paragraph the name of the alleged victim.

Insert in the blank in the second paragraph the felony offense(s) that the evidence shows the defendant or his accomplice may have committed in order to come within the forcible felony murder rule.

5.04 Responsibility For Act Of Another—Withdrawal

A person is not legally responsible for the conduct of another, if, before the commission of the offense charged, he terminates his effort to promote or facilitate the commission of the offense charged and [(wholly deprives his prior efforts of effectiveness in the commission of that offense) (gives timely warning to the proper law enforcement authorities) (makes proper effort to prevent the commission of that offense)].

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-2(c)(3) (West 2016).

Give in conjunction with Instruction 5.03 when there is evidence of withdrawal.

Use applicable bracketed material.

5.05 Defendant's Responsibility For Act Of Another—Actor Not Legally Responsible

A person who causes another person to perform a criminal act is legally responsible for that act although the person who actually performed the act was not legally responsible because he was [(intoxicated) (in a drugged condition) (insane) (an innocent agent) (an infant) (_____)].

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-2(a) (West 2016).

See Chapter 720, Articles 6 and 7 for defenses and justifications.

Insert in the blank any other appropriate term.

Use applicable bracketed material.

5.06 Defendant's Responsibility For Act Of Another—Actor Not Prosecuted, Etc.

A person who is legally responsible for the conduct of another may be convicted for the offense committed by the other person even though the other person, who it is claimed committed the offense, [(has not been prosecuted) (has not been convicted) (has been convicted of a different offense) (is not amenable to justice) (has been acquitted)].

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-3 (West 2016).

Give Instruction 5.03.

See also Standefer v. United States, 447 U.S. 10, 14–20, 100 S. Ct. 1999, 2003–06, 64 L. Ed. 2d 689, 695–98 (1980) (permitting the conviction of accessories to federal criminal offenses despite the prior acquittal of the actual perpetrator of the offense).

Use applicable bracketed material.

5.07 Corporate Responsibility—Act Of Agent

A corporation is legally responsible for conduct which an agent of the corporation performs while acting within the scope of his office or employment and on behalf of the corporation.

The word “agent” means any director, officer, servant, employee, or other person who is authorized to act on behalf of the corporation.

Committee Note

Instruction and Committee Note Approved October 28, 2016

This instruction is based upon Section 5-4. It is applicable to misdemeanors and prosecutions under Chapter 720, Section 24-720 ILCS 5/24-1 (Weapons) or any other statute which clearly indicates a legislative purpose to impose liability on a corporation.

5.08 Corporate Responsibility—Authorized Acts

A corporation is legally responsible for conduct which is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment on behalf of the corporation.

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-4(a)(2) (West 2016).

Give Instruction 5.10, defining the term “high managerial agent.”

5.09 Corporate Responsibility—Defense

If the corporate defendant proves by a preponderance of the evidence that a high managerial agent, having supervisory responsibility over the conduct which is the subject matter of the offense charged, exercised due diligence to prevent the commission of the offense charged, you should find the corporate defendant not guilty.

Committee Note

720 ILCS 5/5-4(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 5-4(b) (1991)).

Give Instruction 4.18, defining the phrase “preponderance of the evidence.”

Give Instruction 5.10, defining the term “high managerial agent.”

This instruction should be given under Section 5-4(b) and should not be given except when appropriate and then in conjunction with Instruction 5.07. It is not applicable to Instruction 5.08 and is not applicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of Section 5-4(b) or if the offense is one for which absolute liability is imposed.

5.10 Definition Of High Managerial Agent

The term “high managerial agent” means an officer of the corporation, or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-4(c)(2) (West 2016).

Give whenever Instructions 5.08 or 5.09 are given.

5.11 Personal Responsibility Of Corporate Agent

A person is legally responsible for conduct which he performs or causes to be performed in the name of or on behalf of a corporation to the same extent as though the conduct were performed in his own name or behalf.

Committee Note

Instruction and Committee Note Approved October 28, 2016

720 ILCS 5/5-5(a) (West 2016).

Give when an individual is jointly charged with his corporate employer or is charged individually for conduct committed on behalf of his corporate employer.

5.12 Definition Of Digital Signature

The phrase “digital signature” means an encrypted electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature.

Committee Note

205 ILCS 705/5 (West 2013).

5.13 Definition Of Electronic Signature

The phrase “electronic signature” means a signature in electronic form attached to or logically associated with an electronic record.

Committee Note

5 ILCS 175/5-105 (West 2013).

5.14 Definition Of Signature Device

The phrase “signature device” means unique information, such as codes, algorithms, letters, numbers, private keys, or personal identification numbers (PINs), or a uniquely configured physical device, that is required, alone or in conjunction with other information or devices, in order to create an electronic signature attributable to a specific person.

Committee Note

5 ILCS 175/5-105 (West 2013).

5.15 Definition Of “False Document” or “Document That Is False”

[Reserved.]

Committee Note

The Committee moved and renumbered this Instruction as Instruction 13.42A.

Chapter 6.00

INCHOATE OFFENSES

SYNOPSIS

- 6.01 Definition Of Solicitation—Other Than Solicitation Of Murder Or Solicitation Of Murder For Hire
- 6.01A Definition Of Solicitation Of Murder
- 6.01B Definition Of Solicitation Of Murder For Hire
- 6.01C Definition Of First Degree Murder For Use When Solicitation Of Murder Or Solicitation Of Murder For Hire Is Charged
- 6.02 Issues In Solicitation—Other Than Solicitation Of Murder Or Solicitation Of Murder For Hire
- 6.02A Issues In Solicitation Of Murder
- 6.02B Issues In Solicitation Of Murder For Hire
- 6.03 Definition Of Conspiracy—Other Than Certain Drug Conspiracies
- 6.04 Issues In Conspiracy—Other Than Certain Drug Conspiracies
- 6.05 Definition Of Attempt—Other Than Attempt First Degree Murder
- 6.05X Definition Of Attempt First Degree Murder
- 6.05XX Definition Of Attempt First Degree Murder—Enhancing Factors Based On Victim
- 6.06 Impossibility Of Committing Offense Attempted—No Defense
- 6.07 Issues In Attempt—Other Than Attempt First Degree Murder
- 6.07X Issues In Attempt First Degree Murder
- 6.07XX Issues In Attempt First Degree Murder—Enhancing Factors Based On Victim

6.01 Definition Of Solicitation—Other Than Solicitation Of Murder Or Solicitation Of Murder For Hire

A person commits the offense of solicitation when, with intent that the offense of _____ be committed, he [(commands) (encourages) (requests)] another to commit _____.

The offense solicited need not have been committed.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1 (West 2013).

Give Instruction 6.02.

Do not give this instruction if the defendant is charged with solicitation of murder or solicitation of murder for hire; instead, give the appropriate instructions from Instructions 6.01A, 6.01B, 6.02A, and 6.02B.

The court must also give an instruction that defines the offense which is the alleged subject of the solicitation. However, the issues instruction for that offense should not be given in conjunction with the solicitation instruction. For example, if a defendant is charged with solicitation to commit robbery, Instruction 14.03 defining robbery should be given following this instruction, but Instruction 14.04 listing the issues in a robbery prosecution would not be given unless the defendant was also charged with the substantive offense of robbery.

The words “commands,” “encourages,” and “requests” are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill. 2d 172, 435 N.E.2d 490 (1982). If the charging document alleges separate methods of solicitation in separate counts, the jury should receive one definitional Instruction 6.01 naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02 for the issues in each solicitation count.

720 ILCS 5/8-3 (West 2013) raises a legal issue for the court.

For the relationships among inchoate offenses, *see People v. Stroner*, 96 Ill. 2d 204, 449 N.E.2d 1326 (1983) (solicitation to commit murder is not a lesser included offense of conspiracy to commit murder and conspiracy to commit murder is not a lesser included offense of attempted murder on theory of accountability).

Insert in the blanks the name of the offense that is the alleged subject of the solicitation.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.01A Definition Of Solicitation Of Murder

A person commits the offense of solicitation of murder when, with the intent that the offense of first degree murder be committed, he [(commands) (encourages) (requests)] another to commit that offense.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1.1 (West 2013).

Give Instruction 6.02A.

Give Instruction 6.01C, defining the offense of first degree murder (for use when solicitation of murder or solicitation of murder for hire is charged). In *People v. Eaglin*, 224 Ill. App. 3d 668, 672, 586 N.E.2d 1280 (3d Dist. 1992), a case involving a prosecution of solicitation of murder for hire, the court held that an instruction defining first degree murder was erroneous because it included a reference to a defendant's mental state other than his intent to kill an individual. Even though *Eaglin* dealt with solicitation of murder for hire (720 ILCS 5/8-1.2) and not with solicitation of murder (720 ILCS 5/8-1(b)), the Committee believes that the *Eaglin* analysis applies to solicitation of murder because of that statute's similarity to solicitation of murder for hire.

Both Section 8-1(b) and Section 8-1.2 speak of a person committing their respective solicitation offenses when that person performs certain acts "with the intent that the offense of first degree murder be committed." In *Eaglin*, the court wrote that solicitation requires proof of an intent to kill. *Eaglin*, 224 Ill. App. 3d at 671-72. The Committee believes that holding applies to solicitation of murder as well as to solicitation of murder for hire.

The words "commands," "encourages," and "requests" are disjunctive methods by which the offense of solicitation can be committed. See *People v. Cole*, 91 Ill. 2d 172, 435 N.E.2d 490 (1982). The Committee believes this concept would also apply to the alternatives in the crime of solicitation of murder. If the charging document alleges separate methods of solicitation of murder in separate counts, the jury should receive one definitional Instruction 6.01A naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02A for the issues in each solicitation of murder count.

Solicitation of murder is a new, distinct statutory offense; it is not a general inchoate offense, such as those found in 720 ILCS 5/8-1 *et seq.*

For the relationships among inchoate offenses, see *People v. Stroner*, 96 Ill. 2d 204, 449 N.E.2d 1326 (1983) (solicitation to commit murder is not a lesser included offense of conspiracy to commit murder and conspiracy to commit murder is not a lesser included offense of attempted murder on theory of accountability).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.01B Definition Of Solicitation Of Murder For Hire

A person commits the offense of solicitation of murder for hire when, with the intent that the offense of first degree murder be committed, he procures another to commit that offense pursuant to any [(contract) (agreement) (understanding) (command) (request)] for money or anything of value.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1.2 (West 2013).

Give Instruction 6.02B.

Give Instruction 6.01C, defining the offense of first degree murder (for use when solicitation of murder or solicitation of murder for hire is charged).

The words “commands,” “encourages,” and “requests” are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill. 2d 172, 435 N.E.2d 490 (1982). The Committee believes this concept would also apply to the alternatives in the new crime of solicitation of murder for hire. If the charging document alleges separate methods of solicitation of murder for hire in separate counts, the jury should receive one definitional Instruction 6.01B naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02B for the issues in each solicitation of murder for hire count.

Solicitation of murder for hire is a new, distinct statutory offense; it is not a general inchoate offense, such as those found in 720 ILCS 5/8-1 *et seq.*

For the relationships among inchoate offenses, *see People v. Stroner*, 96 Ill. 2d 204, 449 N.E.2d 1326 (1983) (solicitation to commit murder is not a lesser included offense of conspiracy to commit murder and conspiracy to commit murder is not a lesser included offense of attempted murder on theory of accountability).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.01C Definition Of First Degree Murder For Use When Solicitation Of Murder Or Solicitation Of Murder For Hire Is Charged

A person commits the offense of first degree murder when he kills an individual if, in performing the acts which cause the death, he intends to kill that individual.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/9-1(a)(1) (West 2013), defining first degree murder, and 720 ILCS 5/8-1(b) (formerly 720 ILCS 5/8-1.1) (West 2013), repealed by P.A. 96-710, effective Jan. 1, 2010, defining solicitation of murder.

In *People v. Eaglin*, 224 Ill. App. 3d 668, 672, 586 N.E.2d 1280 (3d Dist. 1992), a case involving a prosecution of solicitation of murder, the court held that an instruction defining first degree murder was erroneous because it included a reference to a defendant's mental state other than his intent to kill an individual.

6.02 Issues In Solicitation—Other Than Solicitation Of Murder Or Solicitation Of Murder For Hire

To sustain the charge of solicitation, the State must prove the following propositions:

First Proposition: That the defendant [(commanded) (encouraged) (requested)] _____ to commit _____; and

Second Proposition: That the defendant did so with intent that the offense of _____ be committed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1 (West 2013).

Give Instruction 6.01.

Do not give this instruction if the defendant is charged with solicitation of murder or solicitation of murder for hire; instead, give the appropriate instructions from Instructions 6.01A, 6.01B, 6.02A, and 6.02B.

The words “commands,” “encourages,” and “requests” are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill. 2d 172, 435 N.E.2d 490 (1982). If the charging document alleges separate methods of solicitation in separate counts, the jury should receive one definitional Instruction 6.01 naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02 for the issues in each solicitation count.

Insert in the appropriate blanks the name of the person solicited and the crime solicited.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.02A Issues In Solicitation Of Murder

To sustain the charge of solicitation of murder, the State must prove the following propositions:

First Proposition: That the defendant [(commanded) (encouraged) (requested)] _____ to commit the offense of first degree murder; and

Second Proposition: That the defendant did so with the intent that the offense of first degree murder be committed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1(b) (West 2013) (formerly 720 ILCS 5/8-1.1) (West 2013), repealed by P.A. 96-710, effective January 1, 2010.

Give Instruction 6.01A.

The words “commands,” “encourages,” and “requests” are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill. 2d 172, 435 N.E.2d 490 (1982). The Committee believes this concept would also apply to the alternatives in the crime of solicitation of murder. If the charging document alleges separate methods of solicitation of murder in separate counts, the jury should receive one definitional Instruction 6.01A naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.01A for the issues in each solicitation of murder count.

Solicitation of murder is a distinct statutory offense; it is not a general inchoate offense, such as those found in 720 ILCS 5/8-1 *et seq.*

Insert in the blank the name of the person solicited.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.02B Issues In Solicitation Of Murder For Hire

To sustain the charge of solicitation of murder for hire, the State must prove the following propositions:

First Proposition: That the defendant procured _____ to commit the offense of first degree murder pursuant to any [(contract) (agreement) (understanding) (command) (request)] for money or anything of value; and

Second Proposition: That the defendant did so with the intent that the offense of first degree murder be committed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-1.2 (West 2013).

Give Instruction 6.01B.

The words “commands,” “encourages,” and “requests” are disjunctive methods by which the offense of solicitation can be committed. *See People v. Cole*, 91 Ill. 2d 172, 435 N.E.2d 490 (1982). The Committee believes this concept would also apply to the alternatives in the crime of solicitation of murder for hire. If the charging document alleges separate methods of solicitation of murder for hire in separate counts, the jury should receive one definitional Instruction 6.01B naming from the bracketed material each method alleged; but the jury should receive a separate Instruction 6.02B for the issues in each solicitation of murder for hire count.

Solicitation of murder for hire is a distinct statutory offense; it is not a general inchoate offense, such as those found in 720 ILCS 5/8-1 *et seq.*

Insert in the blank the name of the person solicited.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.03 Definition Of Conspiracy—Other Than Certain Drug Conspiracies

A person commits the offense of conspiracy when he, with intent that the offense of _____ be committed, agrees with [(another) (others)] to the commission of the offense of _____, and an act in furtherance of the agreement is performed by any party to the agreement.

An agreement may be implied from the conduct of the parties although they acted separately or by different means and did not come together or enter into an express agreement.

To constitute the offense of conspiracy it is not necessary that the conspirators succeed in committing the offense of _____.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-2 (West 2013).

Give Instruction 6.04.

The court must also give an instruction that defines the offense that is the alleged subject of the conspiracy. For example, if a defendant is charged with conspiracy to commit first degree murder, Instruction 7.01A defining first degree murder would be given following this instruction, but Instruction 7.02A listing the issues in a first degree murder prosecution would not be given unless the defendant was also charged with the substantive offense of first degree murder.

720 ILCS 5/8-3 raises a legal issue for the court.

720 ILCS 5/8-2(a) encompasses the bilateral theory of conspiracy requiring actual agreement between at least two persons to commit the offense to support a conspiracy conviction. *People v. Foster*, 99 Ill. 2d 48, 457 N.E.2d 405 (1983). The unilateral theory is largely embraced by the solicitation statute (720 ILCS 5/8-1). See *Foster*, 99 Ill. 2d at 53 (addressing what was Chapter 38, Section 8-1).

For the relationships among inchoate offenses, see *People v. Stroner*, 96 Ill. 2d 204, 449 N.E.2d 1326 (1983) (solicitation to commit murder is not a lesser included offense of conspiracy to commit murder and conspiracy to commit murder is not a lesser included offense of attempted murder on theory of accountability).

Insert in the blanks the name of the offense that is the alleged subject of the conspiracy.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.04 Issues In Conspiracy—Other Than Certain Drug Conspiracies

To sustain the charge of conspiracy, the State must prove the following propositions:

First Proposition: That the defendant agreed with _____ to the commission of the offense of _____; and

Second Proposition: That the defendant did so with intent that the offense of _____ be committed; and

Third Proposition: That an act in furtherance of the agreement was performed by any party to the agreement.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-2 (West 2013).

Give Instruction 6.03.

Insert in the appropriate blanks the name of the offense which is the alleged subject of the conspiracy and the name of the person or persons with whom the defendant is charged with conspiring.

6.05 Definition Of Attempt—Other Than Attempt First Degree Murder

A person commits the offense of attempt when he, [without lawful justification and] with the intent to commit the offense of _____, does any act which constitutes a substantial step toward the commission of the offense of _____.

The offense attempted need not have been committed.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a) (West 2013).

Give Instruction 6.07.

Do not give this instruction if the defendant is charged with attempt first degree murder; instead, give Instruction 6.05X.

The court must also give an instruction that defines the offense which is the alleged subject of the attempt. However, the issues instruction for that offense should not be given in conjunction with the attempt instruction. For example, if a defendant is charged with attempt to commit robbery, Instruction 14.01 defining robbery would be given following this instruction, but Instruction 14.02 listing the issues in a robbery prosecution would not be given unless the defendant was also charged with the substantive offense of robbery.

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in 720 ILCS 5/7-1 (West 2013).

Insert in the blanks the name of the offense that is the alleged subject of the attempt.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.05X Definition Of Attempt First Degree Murder

A person commits the offense of attempt first degree murder when he, [without lawful justification and] with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual.

The killing attempted need not have been accomplished.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a) and 5/9-1(a)(1) (West 2013).

Give Instruction 6.07X.

Give this instruction whenever the defendant is charged with attempt first degree murder. Do not use Instruction 6.05, the general definitional instruction for the charge of attempt, when the defendant is charged with attempt first degree murder.

The Illinois Supreme Court has unequivocally held that the specific intent to kill is an essential element of the offense of attempt first degree murder. *People v. Harris*, 72 Ill. 2d 16, 377 N.E.2d 28 (1978). Nonetheless, attempt first degree murder cases continue to be tried in which the jury is not properly instructed. *See People v. Velasco*, 184 Ill. App. 3d 618, 540 N.E.2d 521 (1st Dist. 1989). Accordingly, the Committee believes this special instruction is necessary to overcome this problem.

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in 720 ILCS 5/7-1 (West 2013).

For an example of the use of this instruction, see Sample Set 27.02.

6.05XX Definition Of Attempt First Degree Murder—Enhancing Factors Based On Victim

A person commits the offense of attempt first degree murder of [(a peace officer) (a fireman) [(an employee of) (an inmate at) (an individual present in)] a correctional institution or facility) (an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] when he, [without lawful justification and] with the intent to kill an individual, does any act which constitutes a substantial step toward the killing of an individual who was

[1] a [(peace officer) (fireman)] [(who at the time was in the course of) (with the intent to prevent him from) (in retaliation for his)] performing his official duties, and the defendant knew or should have known that the individual was a [(peace officer) (fireman)].

[or]

[2] an employee of an institution or facility of the Department of Corrections [or any similar local correctional agency] [(who at the time was in the course of) (with the intent to prevent him from) (in retaliation for his)] performing his official duties.

[or]

[3] [(an inmate at) (an individual present in)] an institution or facility of the Department of Corrections [or any similar local correctional agency].

[or]

[4] [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit] [(who at the time was in the course of) (with the intent to prevent him from) (in retaliation for his)] performing his official duties, and the defendant knew or should have known that the individual was [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)].

The killing attempted need not have been accomplished.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a), (c)(1), and 5/9-1(b)(1), (2), and (12) (West 2013).

Give Instruction 6.07XX.

Give this instruction when the defendant is charged with attempt first degree murder and the intended victim was a peace officer, fireman, correctional institution or facility employee, emergency medical technician (EMT), ambulance driver, or other medical assistance or first aid personnel.

Public Act 87-921 amended Section 8-4(c)(1) by enhancing the penalty for attempt first degree murder when (1) the intended victim is a peace officer, a

fireman, an employee of, inmate at, or visitor to a correctional institution or facility, an EMT, an ambulance driver, or other medical assistance or first aid personnel, and (2) the defendant intends to kill the intended victim (a) at a time when he is in the course of performing his official duties, (b) to prevent him from performing his official duties, or (c) in retaliation for performing his official duties.

P.A. 88-433, effective January 1, 1994, amended this section by changing the term “paramedic” to “emergency medical technician.” If the definition of EMT or the type of EMT becomes an issue, see Sections 3.5 of the Emergency Medical Services System Act (210 ILCS 50/3.5 (West 2013)) which define EMT-Basic, EMT-Intermediate, and EMT-Paramedic. *See* 720 ILCS 5/2-6.5 (West 2013).

Give Instruction 6.05X for all other charges of attempt first degree murder. Do not use Instruction 6.05, the general definitional instruction for the charge of attempt, when the defendant is charged with attempt first degree murder.

The supreme court has unequivocally held that the specific intent to kill is an essential element of the offense of attempt first degree murder. *People v. Harris*, 72 Ill. 2d 16, 377 N.E.2d 28 (1978). Nonetheless, attempt first degree murder cases continue to be tried in which the jury is not properly instructed. *See People v. Velasco*, 184 Ill. App. 3d 618, 540 N.E.2d 521 (1st Dist. 1989). Accordingly, the Committee believes that this instruction and Instruction 6.05X are necessary to overcome this problem.

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in 720 ILCS 5/7-1 to 5/7-14.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

6.06 Impossibility Of Committing Offense Attempted—No Defense

It is not a defense to the charge of attempt that, because of a misapprehension of the circumstances, it would have been impossible to commit the offense attempted.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(b) (West 2013).

Give this instruction only when there is evidence of impossibility.

6.07 Issues In Attempt—Other Than Attempt First Degree Murder

To sustain the charge of attempt, the State must prove the following propositions:

First Proposition: That the defendant performed an act which constituted a substantial step toward the commission of the offense of _____; and

Second Proposition: That the defendant did so with the intent to commit the offense of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a) (West 2013).

Give Instruction 6.05.

Do *not* use this instruction if the defendant is charged with attempt first degree murder; instead, use Instruction 6.07X.

Insert in the blanks the name of the offense that is the alleged subject of the attempt.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

6.07X Issues In Attempt First Degree Murder

To sustain the charge of attempt first degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed an act which constituted a substantial step toward the killing of an individual; and

Second Proposition: That the defendant did so with the intent to kill an individual.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4 and 5/9-1 and 9-1(a)(1) (West 2013).

Give this instruction *only* when Instruction 6.05X is also given. *See* Committee Note to Instruction 6.05X.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.02.

6.07XX Issues In Attempt First Degree Murder—Enhancing Factors Based On Victim

To sustain the charge of attempt first degree murder of [(a peace officer) (a fireman) [(an employee of) (an inmate at) (an individual present in)] a correctional institution or facility) (an emergency medical technician) (a paramedic) (an ambulance driver) (a medical assistant) (a first aid attendant)], the State must prove the following propositions:

First Proposition: That the defendant performed an act which constituted a substantial step toward the killing of an individual; and

Second Proposition: That the defendant did so with the intent to kill that individual;
and

Third Proposition: That the individual the defendant intended to kill was

[1] a [(peace officer) (fireman)];

[or]

[2] an employee of an institution or facility of the Department of Corrections [or any similar local correctional agency];

[or]

[3] an [(inmate at) (individual present in)] an institution or facility of the Department of Corrections [or any similar local correctional agency] [with the knowledge and approval of the chief administrative officer thereof];

[or]

[4] [(an emergency medical technician) (a paramedic) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit];

and

Fourth Proposition: That the defendant did so

[A] at a time when that [(peace officer) (fireman) (employee of an institution or facility of the Department of Corrections [or any similar local correctional agency]) [(an emergency medical technician) (paramedic) (ambulance driver) (medical assistant) (first aid attendant)] employed by a municipality [or other governmental unit]]) was in the course of performing his official duties[.(; and)]

[or]

[B] with the intent to prevent that [(peace officer) (fireman) (employee of an institution or facility of the Department of Corrections [or any similar local correctional agency]) [(an emergency medical technician) (paramedic) (ambulance driver) (medical assistant) (first aid attendant)] employed by a municipality [or other governmental unit]]) from performing his official duties[.(; and)]

[or]

[C] in retaliation for that [(peace officer) (fireman) (employee of an institution or facility of the Department of Corrections [or any similar local correctional agency]) ((an emergency medical technician) (paramedic) (ambulance driver) (medical assistant) (first aid attendant))] employed by a municipality [or other governmental unit]]) performing his official duties[(.) (; and)]

[or]

[D] at a time when that [(inmate) (individual)] was present on the grounds of an institution or facility of the Department of Corrections [with the knowledge and approval of the chief administrative officer thereof].

[*Fifth Proposition*: That the defendant knew or should have known that the individual was [(a peace officer) (a fireman) (an emergency medical technician) (a paramedic) (an ambulance driver) (a medical assistant) (a first aid attendant)].]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 17, 2014

720 ILCS 5/8-4(a), (c)(1), and 5/9-1(a)(1), (b)(1), (2), and (12) (West 2013).

Give this instruction *only* when Instruction 6.05XX is also given. *See* Committee Note to Instruction 6.05XX.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Use the bracketed Fifth Proposition *only* when the enhancing factor is based on the victim's status as a peace officer, fireman, an emergency medical technician, paramedic, ambulance driver, medical assistant, or first aid attendant. *See* Sections 9-1(b)(1) and 9-1(b)(12).

Do *not* use the Fifth Proposition when the enhancing factor is based on the victim's status as an employee, an inmate at, or an individual present in the Department of Corrections or a similar local correctional agency. *See* Section 9-1(b)(2).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury. The bracketed number paragraphs in the Third Proposition correlate to the bracketed number paragraphs in Instruction 6.05XX. The bracketed letter paragraphs in the

Fourth Proposition do not correlate to Instruction 6.05XX.

Chapter 7.00

HOMICIDE

SYNOPSIS

- 7.01 Definition Of First Degree Murder
- 7.01B Definition Of First Degree Murder
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- 7.01X Explanation To Jury Of The Reason For Designating One Category Of First Degree Murder As (Type A) And Another Category Of First Degree Murder As (Type B)
- 7.02 Issues In First Degree Murder (When Second Degree Murder Is Not Also An Issue)
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7.01 Definition Of First Degree Murder***Use For Cases Where The Offense Is Alleged To Have Occurred Before July 1, 2021.***

A person commits the offense of first degree murder when he kills an individual [without lawful justification] if, in performing the acts which cause the death,

[1] he intends to kill or do great bodily harm to that individual [or another];

[or]

[2] he knows that such acts will cause death to that individual [or another];

[or]

[3] he knows that such acts create a strong probability of death or great bodily harm to that individual [or another];

[or]

[4] he [(is attempting to commit) (is committing)] the offense of _____.

Committee Note

720 ILCS 5/9-1 (West 2013).

This instruction applies to cases tried under P.A. 84-1450, which abolishes the offense of murder and replaces it with the offense of first degree murder.

Give Instruction 6.05, defining the offense of attempt following the definition of the forcible felony, when the basis for an instruction on felony murder is an alleged attempt to commit a forcible felony. However, no attempt issues instruction should be given unless the defendant also had been charged with an attempt offense.

When the prosecution is for an inchoate offense (i.e., attempt first degree murder, solicitation to commit first degree murder, conspiracy to commit first degree murder), do not give paragraphs [2], [3], or [4]. In addition, modify the murder definition in paragraph [1] in attempt first degree murder cases to require that the defendant had the intent to kill another. *See People v. Harris*, 72 Ill. 2d 16, 377 N.E.2d 28 (1978).

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 720. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

When paragraph [4] is given, insert in the blank the applicable forcible felony from those listed in 720 ILCS 5/2-8 (except second degree murder). Follow this instruction with the instruction defining that forcible felony.

The Committee has elected to put the phrase “or another” in brackets because, in the usual case, this portion of the statutory definition is not applicable to the factual context presented, and the presence of this might cause confusion.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Sets 27.01, 27.04A, 27.04B, 27.05, and 27.06.

7.01B Definition Of First Degree Murder***Use For Cases Where The Offense Is Alleged To Have Occurred
After June 30, 2021.***

A person commits the offense of first degree murder when he kills an individual [without lawful justification] if, in performing the acts which cause the death,

[1] he intends to kill or do great bodily harm to that individual [or another];

[or]

[2] he knows that such acts will cause death to that individual [or another];

[or]

[3] he knows that such acts create a strong probability of death or great bodily harm to that individual [or another];

[or]

[4] he, acting [(alone) (with one or more participants)], [(commits) (attempts to commit)] the offense of _____, and [(in the course of) (in furtherance of) (in flight from)] that offense, [(he) (another participant)] causes the death of a person.

Committee Note

720 ILCS 5/9-1 (West 2021), as amended by P.A. 101-0652, effective July 1, 2021.

This instruction applies to cases tried under P.A. 84-1450, which abolishes the offense of murder and replaces it with the offense of first degree murder.

The Committee does not take a position as to whether P.A. 101-0652 is retroactive.

When using paragraph [4] alleging felony murder, use the corresponding paragraph [4] of Instruction 7.02B.

Give Instruction 6.05, defining the offense of attempt following the definition of the forcible felony, when the basis for an instruction on felony murder is an alleged attempt to commit a forcible felony. However, no attempt instruction should be given unless the defendant also had been charged with an attempt offense.

When the prosecution is for an inchoate offense (i.e., attempt first degree murder, solicitation to commit first degree murder, conspiracy to commit first degree murder), do not give paragraphs [2], [3], or [4]. In addition, modify the murder definition in paragraph [1] in attempt first degree murder cases to require that the defendant had the intent to kill another. *See People v. Harris*, 72 Ill. 2d 16, 377 N.E.2d 28 (1978).

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 720. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

When paragraph [4] is given, insert in the blank the applicable forcible felony from those listed in 720 ILCS 5/2-8 (except second degree murder). Follow this

instruction with the instruction defining that forcible felony.

The Committee has elected to put the phrase “or another” in brackets because, in the usual case, this portion of the statutory definition is not applicable to the factual context presented, and the presence of this might cause confusion.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Sets 27.01, 27.04A, 27.04B, 27.05, and 27.06.

7.01S Definition Of Second Degree Murder When First Degree Murder Is Not Charged

A person commits the offense of second degree murder when he kills an individual [without lawful justification] if, in performing the acts which cause the death,

[1] he intends to kill or do great bodily harm to that individual [or another];

[or]

[2] he knows that such acts will cause death to that individual [or another];

[or]

[3] he knows that such acts create a strong probability of death or great bodily harm to that individual [or another].

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2 (West 2013).

Give Instruction 7.02S.

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in 720 ILCS 5/7-1 through 5/7-14.

In *People v. Burks*, 189 Ill. App. 3d 782, 545 N.E.2d 782 (3d Dist. 1989), the appellate court held that the State could elect to bring a charge of second degree murder without first charging the defendant with first degree murder. The indictment in *Burks* alleged that the defendant had committed first degree murder by shooting the victim, but that at the time of the killing he had unreasonably believed the circumstances to be such that if they existed would justify or exonerate his action. In this context, the appellate court stated the following:

“By charging a defendant with second degree murder, the State is alleging that it can prove the elements of first degree murder, but is conceding the presence of mitigating factors. Under these circumstances the defendant bears no burden to prove any mitigating factors. Of course, if the instant defendant is tried by a jury and the cause reaches the deliberations stage, special jury instructions will be needed to explain the elements of the offense.”

Burks, 189 Ill. App. 3d at 785.

The Committee believes this instruction and Instruction 7.02S comply with the directions of *Burks*. In effect, the State is required to prove the elements of first degree murder, but if it satisfies the jury it has done so, the only verdict and judgment to which it is entitled is guilty of second degree murder. This result follows because the State, in the *Burks* situation, has conceded the presence of the mitigating factor that reduces the defendant’s criminal behavior from first degree murder to second degree murder.

Accordingly, this instruction is identical to Instruction 7.01A except for two changes: (1) the name of the offense is different, and (2) paragraph [4] is omitted. This omission results from the statutory definition of second degree murder which

excludes “felony murder” provisions contained in paragraph [4].

This instruction also applies when a defendant is charged with first degree murder, is convicted of second degree murder, and later has that conviction reversed and a new trial ordered. At the new trial, collateral estoppel prevents the State from retrying the defendant for first degree murder. See *People v. Newbern*, 219 Ill. App. 3d 333, 354, 579 N.E.2d 583 (4th Dist. 1991); *People v. Thomas*, 216 Ill. App. 3d 469, 472–73, 576 N.E.2d 1020 (1st Dist. 1991). Under these circumstances, give Instructions 7.01S and 7.02S.

The Committee has elected to put the phrase “or another” in brackets because, in the usual case, this portion of the statutory definition is not applicable to the factual context presented, and the presence of this phrase might cause confusion.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.01X Explanation To Jury Of The Reason For Designating One Category Of First Degree Murder As (Type A) And Another Category Of First Degree Murder As (Type B)

The terms “(Type A)” and “(Type B)” that I use in referring to first degree murder have no legal significance. I use those terms simply to distinguish between different kinds of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

Pursuant to 720 ILCS 5/9-2(a), as amended by P.A. 84-1450, effective July 1, 1987, a conviction of second degree murder cannot be based upon a charge of first degree murder under 720 ILCS 5/9-1(a)(3) (felony murder). Accordingly, when both kinds of first degree murder are charged, one kind under Section 9-1(a)(3) (felony murder) and the other kind under Section 9-1(a)(1) or 9-1(a)(2) (“knowing or intentional murder”), and when the court is going to instruct the jury on the lesser offense of second degree murder, Instruction 7.02 should be used for the first degree murder count under Section 9-1(a)(3) and either Instruction 7.04 or 7.06 should be used for the other first degree murder counts upon which the second degree murder instruction is based.

The Committee suggests using the designations (Type A) and (Type B) to distinguish between these two categories of first degree murder. The purpose of this instruction is to explain to the jury why these designations are being used.

The felony murder doctrine, embodied in 720 ILCS 5/9-1(a)(3), is almost never the sole basis for a charge in this State of first degree murder. Instead, the prosecution typically alleges “knowing or intentional murder” under Section 9-1(a)(1) or 9-1(a)(2) when charging first degree murder, and the prosecution adds to those charges a first degree murder count based on the felony murder doctrine if such a count may be supported by the evidence.

Accordingly, the Committee believes that there is no need for this instruction unless the jury is going to be instructed on second degree murder. Since the jury may be instructed on second degree murder as a lesser offense *only* of “knowing or intentional murder” (9-1(a)(1) or 9-1(a)(2)) and not of felony murder (9-1(a)(3)), the court must distinguish in its instructions between these two different categories of first degree murder.

For a further discussion of this subject, see the Committee Notes to Instructions 7.02X, 7.04, and 7.06; see also Sample Instruction 27.05 for an example of the utilization of this instruction.

The Committee recommends that this instruction be read to the jury immediately after the court has read to the jury whichever instruction from the 2.01 series the court found applicable. Failure to use this instruction has been held to be reversible error, *People v. Alvine*, 173 Ill. 2d 273, 671 N.E.2d 713 (1996).

For an example of the use of this instruction, see Sample Set 27.05.

7.02 Issues In First Degree Murder (When Second Degree Murder Is Not Also An Issue)

Use For Cases Where The Offense Is Alleged To Have Occurred Before July 1, 2021.

To sustain the charge of first degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to _____;

[or]

[2] he knew that his acts would cause death to _____;

[or]

[3] he knew that his acts created a strong probability of death or great bodily harm to _____;

[or]

[4] he was [(attempting to commit) (committing)] the offense of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/9-1 (West 2013).

Give Instruction 7.01.

Use Instruction 7.02 to set forth the issues in first degree murder only when the court is not also instructing on the lesser offense of second degree murder. When the court is also instructing on second degree murder, instead of using a separate issues instruction for first degree murder, give the combined issues Instruction 7.04 or 7.06.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Insert the name of the victim and the name of the felony (see Committee Note to Instruction 7.01) in the appropriate blanks. Modify this instruction to fit the transferred intent situation. See *People v. Forrest*, 133 Ill. App. 2d 70, 272 N.E.2d 813 (1st Dist. 1971).

This instruction—and only one of this instruction—should be given to the jury to

explain the issues in first degree murder. Do not give separate issues instructions for each of the different ways first degree murder can be charged under Sections 9-1(a)(1) through (a)(3). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill. App. 3d 887, 620 N.E.2d 506 (4th Dist. 1993).

When defendant is charged with the murder of a newborn, and evidence exists that the baby may have been stillborn, a jury must find beyond a reasonable doubt that the baby was born alive. *People v. Ehlert*, 274 Ill. App. 3d 1026, 1038, 654 N.E.2d 705 (1st Dist. 1995). The *Ehlert* court recommended that this finding be included as the first proposition in the issues instructions, proposing the following modifications to Instruction 7.02:

To sustain the charge of first degree murder, the State must prove the following propositions:

First: That the baby, Jane Doe, was born alive; and

Second: That after the live birth the defendant performed the acts which caused the death of the baby, Jane Doe; and

Third: That when the defendant did so, she intended to kill or do great bodily harm to the baby, Jane Doe, or she knew that her acts created a strong probability of death or great bodily harm to the baby, Jane Doe.

Ehlert, 274 Ill. App. 3d at 1038.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

7.02B Issues In First Degree Murder (When Second Degree Murder Is Not Also An Issue)

*Use For Cases Where The Offense Is Alleged To Have Occurred
After June 30, 2021.*

To sustain the charge of first degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to _____.

[or]

[2] he knew that his acts would cause death to _____.

[or]

[3] he knew that his acts created a strong probability of death or great bodily harm to _____.

[or]

[4] he, acting [(alone) (with one or more participants)], [(committed) (attempted to commit)] the offense of _____, and [(in the course of) (in furtherance of) (in flight from)] this offense, [(he) (another participant)] caused the death of a person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/9-1 (West 2021), as amended by P.A. 101-0652, effective July 1, 2021.

Give Instruction 7.01B.

When using paragraph [4] alleging for felony murder, give Instruction 7.15B.

Use Instruction 7.02B to set forth the issues in first degree murder only when the court is not also instructing on the lesser offense of second degree murder. When the court is also instructing on second degree murder, instead of using a separate issues instruction for first degree murder, give the combined issues Instruction 7.04 or 7.06.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Insert the name of the victim and the name of the felony (see Committee Note to Instruction 7.01B) in the appropriate blanks. Modify this instruction to fit the transferred intent situation. See *People v. Forrest*, 133 Ill. App. 2d 70, 272 N.E.2d 813 (1st Dist. 1971).

This instruction—and only one of this instruction—should be given to the jury to explain the issues in first degree murder. Do not give separate issues instructions for each of the different ways first degree murder can be charged under Sections 9-1(a)(1) through (a)(3). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill. App. 3d 887, 620 N.E.2d 506 (4th Dist. 1993).

When defendant is charged with the murder of a newborn, and evidence exists that the baby may have been stillborn, a jury must find beyond a reasonable doubt that the baby was born alive. *People v. Ehlert*, 274 Ill. App. 3d 1026, 1038, 654 N.E.2d 705 (1st Dist. 1995). The *Ehlert* court recommended that this finding be included as the first proposition in the issues instructions, proposing the following modifications to Instruction 7.02:

To sustain the charge of first degree murder, the State must prove the following propositions:

First: That the baby, Jane Doe, was born alive; and

Second: That after the live birth the defendant performed the acts which caused the death of the baby, Jane Doe; and

Third: That when the defendant did so, she intended to kill or do great bodily harm to the baby, Jane Doe, or she knew that her acts created a strong probability of death or great bodily harm to the baby, Jane Doe.

Ehlert, 274 Ill. App. 3d at 1038.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.02S Issues In Second Degree Murder When First Degree Murder Is Not Charged

To sustain the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to _____;

[or]

[2] he knew that his acts would cause death to _____;

[or]

[3] he knew that his acts created a strong probability of death or great bodily harm to _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2 (West 2013).

Give Instruction 7.01S.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instructions from Chapter 24–25.00.

Insert in the blanks the name of the victim and the name of the felony (see note to Instruction 7.01). When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. See *People v. Forrest*, 133 Ill. App. 2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.02X Explanation To Jury That It May Not Find Defendant Guilty Of Felony Murder And Not Guilty Of Underlying Felony

To sustain the charge of first degree murder (Type B), the State must prove that when the defendant performed the acts which caused the death of _____, the defendant was committing the offense of _____. Accordingly, you may find the defendant guilty of first degree murder (Type B) only if you also find the defendant guilty of _____.

If you find the defendant not guilty of _____, then you must find the defendant not guilty of first degree murder (Type B).

Committee Note

Instruction and Committee Note Approved January 30, 2015

This instruction should be used to avoid legally inconsistent verdicts that could arise when the jury is to be instructed on first degree murder under Instruction 7.02 and the *sole* basis for conviction is the felony murder doctrine.

When the felony murder doctrine is the sole basis for conviction, only paragraph [4] of the Second Proposition of Instruction 7.02 should be used.

Insert in the first blank the name of the alleged victim. Insert in the following blanks the name of the underlying felony as used in Instruction 7.02.

For an example of the use of this instruction, see Sample Set 27.05.

7.03 Definition Of Mitigating Factor—Second Degree Murder—Provocation

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if, at the time of the killing, the defendant acts under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)]. Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2(a)(1) and (b) (West 2013).

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Sets 27.04B and 27.05.

7.04 Issues Where Jury Instructed On Both First Degree Murder And Second Degree Murder—Provocation

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to _____;

[or]

[2] he knew that such acts would cause death to _____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to _____.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations [on these charges] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of _____, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder,

you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1, 9-2(a)(1) and 9-2(b) (West 2013).

Give Instruction 7.01.

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.04 should be used for the other first degree murder counts upon which second degree murder may be based. *See* Instructions 7.01X and 7.02X.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill. App. 2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use bracketed language “[of first degree murder]” and “[on these charges]” when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

This instruction—and only one of this instruction—should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under 720 ILCS 5/9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill. App. 3d 887, 620 N.E.2d 506 (4th Dist. 1993).

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.04B.

7.04X Issues Where Jury Instructed On First Degree Murder And Second Degree Murder (Provocation) And Involuntary Manslaughter

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to _____;

[or]

[2] he knew that such acts would cause death to _____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to _____.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of _____, acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder,

you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1(a), 9-2(a)(1) and 9-2(b) (West 2013).

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder and the lesser included offense of involuntary manslaughter, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.04X should be used for the other first degree murder counts upon which second degree murder and involuntary manslaughter may be based. *See* Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.03 (definition of mitigating factor—second degree murder—provocation), 7.07 (definition of involuntary manslaughter), and 7.08 (issues in involuntary manslaughter).

This instruction should be used in conjunction with Instructions 2.01I and 26.01I through 2.01P and 26.01P, the charging and concluding instructions for use when first degree murder, second degree murder, and involuntary manslaughter are all at issue. Do *not* use this instruction in conjunction with any other instruction from the 2.01 and 26.01 series.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

This instruction should be used *only* when the jury is to be instructed on first degree murder, second degree murder (provocation), and involuntary manslaughter.

This instruction should *not* be used if the jury is to be instructed on: (1) second degree murder (belief in justification); (2) second degree murder (belief in justification *and* provocation); (3) first degree murder only; (4) second degree murder only; (5) first degree murder and second degree murder only; (6) first degree murder and involuntary manslaughter only; or (7) second degree murder and involuntary manslaughter only. *See* Instructions 7.04A, 7.06A, 7.06B, 7.06X, and 7.06Y.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill. App. 2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.05 Definition Of Mitigating Factor—Second Degree Murder—Belief In Justification

A mitigating factor exists so as to reduce the offense of first degree murder to the lesser offense of second degree murder if at the time of the killing the defendant believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2(a)(2) (West 2013).

For an example of the use of this instruction, see Sample Sets 27.01, 27.05, and 27.06.

7.06 Issues Where Jury Instructed On Both First Degree Murder And Second Degree Murder—Belief In Justification

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to _____;

[or]

[2] he knew that such acts would cause death to _____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to _____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations [on these charges] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of _____, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1, 9-2(a), and 9-2(b) (West 2013).

Give Instruction 7.01.

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06 should be used for the other first degree murder counts upon which second degree murder may be based. *See* Instructions 7.01X and 7.02X.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill. App. 2d 70, 272 N.E.2d 813 (1st Dist. 1971).

This instruction—and only one of this instruction—should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under 720 ILCS 5/9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill. App. 3d 887, 620 N.E.2d 506 (4th Dist. 1993).

Use bracketed language “[of first degree murder]” and “[on these charges]” when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

For an example of the use of this instruction, see Sample Sets 27.01, 27.05, and 27.06.

7.06B Issues Where Jury Instructed On Both First Degree Murder And Second Degree Murder—Both Provocation And Belief In Justification

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to _____;

[or]

[2] he knew that such acts would cause death to _____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to _____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations [on these charges] should end, and you should return a verdict of not guilty [of first degree murder].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following mitigating factors is present: that the defendant, at the time he performed the acts which caused the death of _____,

believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable,

or

acted under a sudden and intense passion resulting from serious provocation by [(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder, instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1(a), 9-2(a)(1) and (2) (West 2013).

Pursuant to Section 9-2(a), the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06B should be used for the other first degree murder counts upon which second degree murder may be based. *See* Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.03 (definition of mitigating factor—second degree murder—provocation), and 7.05 (definition of mitigating factor—second degree murder—belief in justification).

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

The Committee added this instruction for use *only* in cases in which the court will instruct the jury on first degree murder and *both* theories of second degree murder: provocation and belief in justification. Do *not* give this instruction if the jury is to be instructed on only one theory of second degree murder.

If the jury is to be instructed solely on provocation theory second degree murder, give Instruction 7.04.

If the jury is to be instructed solely on belief in justification theory second degree murder, give Instruction 7.06.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill. App. 2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use the bracketed language “[of first degree murder]” and “[on these charges]” when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

This instruction—and only one of this instruction—should be given to the jury to explain the issues in first degree murder. Do *not* give separate issues instructions for each of the different ways first degree murder can be charged under 720 ILCS

5/9-1(a)(1) through (a)(4). Instead, use the appropriate paragraphs within the Second Proposition. *People v. Johnson*, 250 Ill. App. 3d 887, 620 N.E.2d 506 (4th Dist. 1993).

Use the bracketed language “[of first degree murder]” and “[on these charges]” when the jury will be instructed on other offenses in addition to first degree murder and second degree murder.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.06X Issues Where Jury Instructed On First Degree Murder And Second Degree Murder (Belief In Justification) And Involuntary Manslaughter

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to _____;

[or]

[2] he knew that such acts would cause death to _____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to _____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that the following mitigating factor is present: that the defendant, at the time he performed the acts which caused the death of _____, believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1(a), 9-2(a)(2) (West 2013).

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder and the lesser included offense of involuntary manslaughter, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06X should be used for the other first degree murder counts upon which second degree murder and involuntary manslaughter may be based. *See* Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.05 (definition of mitigating factor—second degree murder—belief in justification), 7.07 (definition of involuntary manslaughter), and 7.08 (issues in involuntary manslaughter).

This instruction should be used in conjunction with Instructions 2.01I and 26.01I through 2.01P and 26.01P, the charging and concluding instructions for use when first degree murder, second degree murder, and involuntary manslaughter are all at issue. Do *not* use this instruction in conjunction with any other instruction from the 2.01 and 26.01 series.

This instruction should be used *only* when the jury is to be instructed on first degree murder, second degree murder (belief in justification), and involuntary manslaughter.

This instruction should *not* be used if the jury is to be instructed on: (1) second degree murder (provocation); (2) second degree murder (provocation *and* belief in justification); (3) first degree murder only; (4) second degree murder only; (5) first degree murder and second degree murder only; (6) first degree murder and involuntary manslaughter only; or (7) second degree murder and involuntary manslaughter only. *See* Instructions 7.04A, 7.04X, 7.06A, 7.06B, and 7.06Y.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill. App. 2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

Homicide

7.06Y Issues Where Jury Instructed On First Degree Murder And Second Degree Murder (Provocation And Belief In Justification) And Involuntary Manslaughter

To sustain either the charge of first degree murder or the charge of second degree murder, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That when the defendant did so,

[1] he intended to kill or do great bodily harm to _____;

[or]

[2] he knew that such acts would cause death to _____;

[or]

[3] he knew that such acts created a strong probability of death or great bodily harm to _____;

and

Third Proposition: That the defendant was not justified in using the force which he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on first degree murder and second degree murder should end, and you should go on with your deliberations to decide whether the defendant is guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should go on with your deliberations to decide whether a mitigating factor has been proved so that the defendant is guilty of the lesser offense of second degree murder instead of first degree murder.

You may not consider whether the defendant is guilty of the lesser offense of second degree murder until and unless you have first determined that the State has proved beyond a reasonable doubt each of the previously stated propositions.

The defendant has the burden of proving by a preponderance of the evidence that a mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder. By this I mean that you must be persuaded, considering all the evidence in this case, that it is more probably true than not true that either of the following mitigating factors is present: that the defendant, at the time he performed the acts which caused the death of _____,

believed the circumstances to be such that they justified the deadly force he used, but his belief that such circumstances existed was unreasonable,

or

acted under a sudden and intense passion resulting from serious provocation by

[(the deceased) (some other person he endeavors to kill, but he negligently or accidentally kills the deceased)].

If you find from your consideration of all the evidence that the defendant has proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of second degree murder.

If you find from your consideration of all the evidence that the defendant has not proved by a preponderance of the evidence that either mitigating factor is present so that he is guilty of the lesser offense of second degree murder instead of first degree murder, you should find the defendant guilty of first degree murder.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1(a), 9-2(a)(1) and (2) (West 2013).

Pursuant to Section 9-2(a), as amended by P.A. 84-1450, the offense of second degree murder may not be based upon first degree murder under Section 9-1(a)(3) (felony murder). When first degree murder is charged under only Section 9-1(a)(3), Instruction 7.02 should be used. When first degree murder under Section 9-1(a)(3) and first degree murder under Section 9-1(a)(1) or 9-1(a)(2) are both charged and the court is also instructing on the lesser offense of second degree murder and the lesser included offense of involuntary manslaughter, Instruction 7.02 should be used for the count under Section 9-1(a)(3), and Instruction 7.06Y should be used for the other first degree murder counts upon which second degree murder and involuntary manslaughter may be based. *See* Instructions 7.01X and 7.02X.

Give Instructions 7.01 (definition of first degree murder), 7.03 (definition of mitigating factor—second degree murder—provocation), 7.05 (definition of mitigating factor—second degree murder—belief in justification), 7.07 (definition of involuntary manslaughter), and 7.08 (issues in involuntary manslaughter).

This instruction should be used in conjunction with Instructions 2.01I and 26.01I through 2.01P and 26.01P, the charging and concluding instructions for use when first degree murder, second degree murder, and involuntary manslaughter are all at issue. Do *not* use this instruction in conjunction with any other instruction from the 2.01 and 26.01 series.

This instruction should be used *only* when the jury is to be instructed on first degree murder, second degree murder (provocation *and* belief in justification), and involuntary manslaughter.

This instruction should *not* be used if the jury is to be instructed on: (1) second degree murder (provocation only); (2) second degree murder (belief in justification only); (3) first degree murder only; (4) second degree murder only; (5) first degree murder and second degree murder only; (6) first degree murder and involuntary manslaughter only; or (7) second degree murder and involuntary manslaughter only. *See* Instructions 7.04, 7.04X, 7.06, 7.06X, and 7.06B.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Insert in the blanks the name of the victim. When the intended victim is someone other than the deceased, modify this instruction to fit the transferred intent situation. *See People v. Forrest*, 133 Ill. App. 2d 70, 272 N.E.2d 813 (1st Dist. 1971).

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.07 Definition Of Involuntary Manslaughter

A person commits the offense of involuntary manslaughter when he unintentionally causes the death of an individual [without lawful justification] by acts which are performed recklessly and are likely to cause death or great bodily harm to another.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3(a) (West 2013).

Give Instruction 5.01, defining “recklessness.”

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 7. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

For an example of the use of this instruction, see Sample Set 27.06.

7.08 Issues In Involuntary Manslaughter

To sustain the charge of involuntary manslaughter, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of _____; and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty of involuntary manslaughter.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3(a) (West 2013).

Give Instruction 7.07.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Insert in the blank the victim's name.

The Committee added the phrase “of involuntary manslaughter” in the second to the last paragraph to highlight this offense when the jury is also considering first degree murder or second degree murder. *See, e.g.*, Instruction 26.01I. However, the Committee chose not to place that phrase in brackets because its inclusion should not interfere with the jury's deliberations in any other context.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.09 Definition Of Reckless Homicide

[1] A person commits the offense of reckless homicide when he unintentionally causes the death of an individual [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)] recklessly and in a manner likely to cause death or great bodily harm.

[or]

[2] A person commits the offense of reckless homicide when he unintentionally causes the death of an individual while driving a vehicle and recklessly using an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.

Committee Note

720 ILCS 5/9-3(a) (West 2020), amended by P.A. 93-682, effective January 1, 2005.

Although the text of the reckless homicide statute as a whole has changed significantly since 2003 (*see* P.A. 93-213, § 7; P.A. 93-682, § 10; P.A. 95-467; P.A. 95-551; P.A. 95-587; P.A. 95-591; P.A. 95-803, § 10; P.A. 95-876, § 315; P.A. 95-884, § 10; P.A. 96-328, § 330; P.A. 101-173, § 20), the last substantive amendment to Section 9-3(a) became effective on January 1, 2005, with the enactment of P.A. 93-682. That amendment added the offense defined in paragraph [2] above.

Give Instruction 5.01 defining the word “recklessness.”

Because Section 9-3 does not include a mental state in the second sentence, the Committee decided to provide a mental state pursuant to 720 ILCS 5/4-3(b) (West 1992). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable paragraph and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

7.09A Definition Of Aggravated Reckless Homicide

A person commits the offense of aggravated reckless homicide when he:

[1] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)] recklessly and in a manner likely to cause death or great bodily harm, while upon a public thoroughfare where children pass going to and from school when a school crossing guard is performing official duties.

[or]

[2] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by driving a motor vehicle recklessly and in a manner likely to cause death or great bodily harm, while in a construction or maintenance zone.

[or]

[3] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)] recklessly and in a manner likely to cause death or great bodily harm, while failing or refusing to comply with any lawful order or direction of any ([authorized police officer) (traffic control aide)] engaged in traffic control.

[or]

[4] unintentionally causes the death of two or more persons as part of a single course of conduct, while driving a vehicle and recklessly using an incline in a roadway, such as a railroad crossing, bridge approach, or hill, to cause the vehicle to become airborne.

[or]

[5] unintentionally causes the death of a peace officer during performance of his official duties as a peace officer, [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)] recklessly and in a manner likely to cause death or great bodily harm.

[or]

[6] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by driving a vehicle recklessly and in a manner likely to cause death or great bodily harm when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized

emergency vehicle if possible with due regard for safety and traffic conditions.

[or]

[7] unintentionally causes the death of [(an individual) (two or more persons as part of a single course of conduct)] [without lawful justification] by driving a vehicle recklessly and in a manner likely to cause death or great bodily harm when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a roadway where changing lanes would be impossible or unsafe, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle.

[or]

[8] unintentionally causes the death of a firefighter or other emergency medical services personnel in the performance of their official duties [without lawful justification] by driving a vehicle recklessly and in a manner likely to cause death or great bodily harm when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle if possible with due regard for safety and traffic conditions.

[or]

[9] unintentionally causes the death of a firefighter or other emergency medical services personnel in the performance of their official duties [without lawful justification] by driving a vehicle recklessly and in a manner likely to cause death or great bodily harm when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights, while on a roadway where changing lanes would be impossible or unsafe, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle.

Committee Note

720 ILCS 5/9-3(e-2) and 9-3(e-3) (West 2020), amended by P.A. 95-467, effective June 1, 2008; 720 ILCS 5/9-3(e-7) and (e-8) (West 2020), amended by P.A. 93-178, effective January 1, 2004; 720 ILCS 5/9-3(e-9) (West 2020), amended by P.A. 93-682, effective January 1, 2005; 720 ILCS 5/9-3(e-7) and (e-8) (West 2020), amended by P.A. 95-591, effective September 10, 2007; 720 ILCS 5/9-3(e-10) (West 2020), amended by P.A. 95-551, effective June 1, 2008; 720 ILCS 5/9-3(e-12) and (e-13) (West 2020), amended by P.A. 95-803, effective

January 1, 2009; 720 ILCS 5/9-3(e-15) (West 2020), amended by P.A. 101-173, effective January 1, 2020; 625 ILCS 5/11-907 (West 2021), amended by P.A. 102-0336, effective January 1, 2022.

Give Instruction 5.01, defining the word “recklessness.”

When applicable, give Instruction 23.79X, defining the term “authorized emergency vehicle.”

When applicable, define the term “construction or maintenance zone.” See Instruction 4.23 on school speed zones.

In *People v. Phipps*, 238 Ill. 2d 54, 69 (2010), and in *People v. Gancarz*, 228 Ill. 2d 312, 315–16 (2008), the Illinois Supreme Court recognized that the General Assembly had substantively amended the aggravated reckless homicide offense by enacting P.A. 93-213, § 7, effective July 18, 2003. That amendment removed the language in 720 ILCS 5/9-3 that defined aggravated reckless homicide while under the influence of alcohol or drugs, and then added to the language that defined the aggravated DUI offense in the Illinois Vehicle Code under 625 ILCS 5/11-501(d)(1) (West 2004). This instruction has been amended to properly reflect the changes in P.A. 93-213, as well as the new aggravating factors that were enacted since 2003.

The offense defined in paragraph [1] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-2) and 720 ILCS 5/9-3(e-3), after enactment of P.A. 95-467, effective June 1, 2008.

The offense defined in paragraph [2] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-7) and 720 ILCS 5/9-3(e-8), after enactment of P.A. 93-178, effective June 1, 2005.

The offense defined in paragraph [3] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-7) and (e-8), after enactment of by P.A. 95-591, effective September 10, 2007.

The offense defined in paragraph [4] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-9), after enactment of P.A. 93-682, effective January 1, 2005.

The offense defined in paragraph [5] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-10), after enactment of P.A. 95-551, effective June 1, 2008.

The offense defined in paragraphs [6] and [7] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-12) and (e-13), after enactment of P.A. 95-803, effective January 1, 2009.

The offense defined in paragraphs [8] and [9] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-15), after enactment of P.A. 101-173, effective January 1, 2020.

Because the reckless homicide statute expressly refers to subsection (c) of Section 11-907 of the Illinois Vehicle Code, the bracketed language used in paragraphs [6], [7], [8], and [9] incorporates the requirements of Scott’s Law as set forth in Instruction 23.79 and Instruction 23.79A.

The terms “due caution” and “due regard for safety and traffic conditions” in paragraphs [6], [7], [8], and [9] are undefined in the Illinois Vehicle Code, and the

Committee takes no position on their meaning.

Use applicable paragraph and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

7.09X Definition Of Under The Influence Of Alcohol—Aggravated Reckless Homicide

This Instruction has been withdrawn.

7.09Y Inferences Of “Reckless” Conduct—Reckless Homicide

In cases involving the offense of reckless homicide, you may infer that the defendant's actions were performed recklessly if you find that:

[1] the defendant committed the offense while driving [(at a speed of more than 20 miles per hour in excess of the posted speed limit) (under the influence of alcohol, other drugs, intoxicating compounds, or any combination thereof)] in [(a school speed zone, while children are present) (a construction or maintenance zone, while construction or maintenance workers are present)].

You are never required to make this inference. It is for the jury to determine whether the inference should be drawn. During your deliberations on your verdict you should consider all of the evidence in the case.

[or]

[2] the defendant committed the offense by driving a vehicle approaching a stationary authorized emergency vehicle that was displaying alternately flashing [(red) (red and white) (blue) (red and blue lights) (amber) (yellow)] warning lights, while on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle, and then failing to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of an authorized emergency vehicle, if possible with due regard for safety and traffic conditions.

You are never required to make this inference. It is for the jury to determine whether the inference should be drawn. During your deliberations on your verdict you should consider all of the evidence in the case.

[or]

[3] the defendant committed the offense by driving a vehicle approaching a stationary authorized emergency vehicle that was displaying alternately flashing [(red) (red and white) (blue) (red and blue lights) (amber) (yellow)] warning lights, while on a roadway where changing lanes would be impossible or unsafe, and then failing to proceed with due caution, reduce the speed of the vehicle, to maintain a safe speed for road conditions, and leave a safe distance until safely past authorized emergency vehicle.

You are never required to make this inference. It is for the jury to determine whether the inference should be drawn. During your deliberations on your verdict you should consider all of the evidence in the case.

Committee Note

720 ILCS 5/9-3(e-11), last amended by P.A. 95-876, effective August 21, 2008.
720 ILCS 5/9-3(e-14), last amended by P.A. 96-328, effective August 11, 2009; 625 ILCS 5/11-907 (West 2021), amended by P.A. 102-0336, effective January 1, 2022.

Give Instruction 5.01, defining the term “recklessness.”

When applicable give Instruction 23.13, defining the term “driving under the influence of alcohol.”

When applicable give Instruction 23.15, defining the term “driving under the influence of drugs.”

When applicable give Instruction 23.17, defining the term “driving under the combined influence of alcohol and drugs.”

When applicable give Instruction 23.79X, defining the term “authorized emergency vehicle.”

When applicable give Instruction 4.23, defining the term “school speed zone.”

When applicable, define the term “construction or maintenance zone.” See Instruction 4.23 regarding school speed zones.

The inference set forth in paragraph [1] reflects the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-11), enacted by P.A. 59-587, effective June 1, 2008, and last amended by P.A. 95-876, effective August 21, 2008. Paragraph [1] may be given when the defendant is charged with reckless homicide in a “posted school zone” or a “construction or maintenance zone,” and there is evidence that the defendant was either: driving at a speed of more than 20 miles per hour in excess of the posted speed limit; or driving while under the influence of alcohol, other drugs, intoxicating compounds, or any combination thereof.

The inferences set forth in paragraphs [2] and [3] reflect the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-14), enacted by P.A. 95-884, effective January 1, 2009, and last amended by P.A. 96-328, effective August 11, 2009. Paragraphs [2] and [3] may be given when the defendant is charged with reckless homicide, and there is evidence that the defendant also violated Scott’s Law (625 ILCS 5/11-907(c) (West 2020)).

Because the reckless homicide statute expressly refers to subsection (c) of Section 11-907 of the Illinois Vehicle Code, the bracketed language used in paragraphs [2] and [3] incorporates the requirements of Scott’s Law as set forth in Instruction 23.79 and Instruction 23.79A.

For constitutional reasons, an inference in a criminal case may not be mandatory when it operates against a defendant, and it may not shift the burden of proof. The Illinois Supreme Court has not addressed whether the permissive inferences set forth in Section 9-3(e-11) and Section 9-3(e-14) satisfy the requirements of constitutional due process. However, in *People v. Funches*, 212 Ill. 2d 334, 342–43 (2004), the Illinois Supreme Court reiterated that “[a]n inference does not violate due process guarantees where three conditions are satisfied: (1) there must be a rational connection between the basic fact and the presumed fact; (2) the presumed fact must be more likely than not to flow from the basic fact; and (3) the inference must be supported by corroborating evidence of guilt. If there is no corroborating evidence, the leap from the basic fact to the presumed element must still be proved beyond a reasonable doubt.” Applying those factors, the *Funches* court rejected the defendant’s as-applied challenge to the constitutionality of a permissive inference in a criminal statute.

The terms “due caution” and “due regard for safety and traffic conditions” in paragraphs [2] and [3] are undefined in the Illinois Vehicle Code, and the Committee takes no position on their meaning.

Use applicable paragraph and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

7.10 Issues In Reckless Homicide

To sustain the charge of reckless homicide, the State must prove the following propositions:

[1] *First Proposition:* That the defendant caused the death of _____ [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)]; and

Second Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] recklessly; and

Third Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] in a manner likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

To sustain the charge of reckless homicide, the State must prove the following propositions:

[2] *First Proposition:* That the defendant caused the death of _____ [without lawful justification] by driving a vehicle; and

Second Proposition: That the defendant, while driving the vehicle, recklessly used an incline in a roadway to cause the vehicle to become airborne.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/9-3(a) (West 2020), amended by P.A. 93-682, effective January 1, 2005.

Although the text of the reckless homicide statute has changed significantly since 2003 (see P.A. 93-213, § 7; P.A. 93-682, § 10; P.A. 95-467; P.A. 95-551; P.A. 95-587; P.A. 95-591; P.A. 95-803, § 10; P.A. 95-876, § 315; P.A. 95-884, § 10; P.A. 96-328, § 330; P.A. 101-173, § 20), the most recent substantive amendment became effective on January 1, 2005, with the enactment of P.A. 93-682. That amendment added the offense defined in paragraph [2] above.

Give Instruction 7.09.

When applicable, give Instruction 7.09Y (Inferences of “Reckless” Conduct—Reckless Homicide).

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Use applicable paragraphs and bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

7.10A Issues In Aggravated Reckless Homicide

To sustain the charge of aggravated reckless homicide, the State must prove the following propositions:

[1] *First Proposition:* That the defendant caused the death of [(_____) (two or more persons as part of a single course of conduct)] [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)]; and

Second Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] recklessly; and

Third Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] in a manner likely to cause death or great bodily harm; and

Fourth Proposition: That in doing so, the defendant's [(motor vehicle) (snowmobile) (all-terrain vehicle) (watercraft)] was upon a public thoroughfare where children pass going to and from school when a school crossing guard is performing official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[2] *First Proposition:* That the defendant caused the death of [(_____) (two or more persons as part of a single course of conduct)] [without lawful justification] by driving a motor vehicle; and

Second Proposition: That the defendant, drove the vehicle recklessly; and

Third Proposition: That the defendant drove the vehicle in a manner likely to cause death or great bodily harm; and

Fourth Proposition: That in doing so, the defendant was driving in a construction or maintenance zone.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[3] *First Proposition:* That the defendant caused the death of [(_____) (two or more persons as part of a single course of conduct)] [without lawful justification] by

[(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operated a watercraft)]; and

Second Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] recklessly; and

Third Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] in a manner likely to cause death or great bodily harm; and

Fourth Proposition: That in doing so, the defendant failed or refused to comply with any lawful order or direction of any [(authorized police officer) (traffic control aide)] engaged in traffic control.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[4] *First Proposition:* That the defendant caused the death of two or more persons as part of a single course of conduct [without lawful justification] by driving a vehicle; and

Second Proposition: That the defendant, while driving the vehicle, recklessly used an incline in a roadway to cause the vehicle to become airborne.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[5] *First Proposition:* That the defendant caused the death of a peace officer during performance of his official duties as a peace officer [without lawful justification] by [(driving a motor vehicle) (operating a snowmobile) (operating an all-terrain vehicle) (operating a watercraft)]; and

Second Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] recklessly; and

Third Proposition: That the defendant [(drove a motor vehicle) (operated a snowmobile) (operated an all-terrain vehicle) (operated a watercraft)] in a manner likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[6] *First Proposition:* That the defendant caused the death of [(_____) (two or more persons as part of a single course of conduct)] [without lawful justification] by driving a vehicle; and

Second Proposition: That the defendant drove the vehicle recklessly; and

Third Proposition: That the defendant drove the vehicle in a manner likely to cause death or great bodily harm; and

Fourth Proposition: That the defendant drove the vehicle on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle, when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights; and

Fifth Proposition: That the defendant failed to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard for safety and traffic conditions.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[7] *First Proposition:* That the defendant caused the death of [(_____) (two or more persons as part of a single course of conduct)] [without lawful justification] by driving a vehicle; and

Second Proposition: That the defendant drove the vehicle recklessly; and

Third Proposition: That the defendant drove the vehicle in a manner likely to cause death or great bodily harm; and

Fourth Proposition: That the defendant drove the vehicle on a roadway where changing lanes would be impossible or unsafe, when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue) (red and blue) (amber) (yellow)] warning lights; and

Fifth Proposition: That the defendant failed to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[8] *First Proposition:* That the defendant caused the death of a firefighter or other emergency medical services personnel in the performance of their official duties [without lawful justification] by driving a vehicle; and

Second Proposition: That the defendant drove the vehicle recklessly; and

Third Proposition: That the defendant drove the vehicle in a manner likely to cause death or great bodily harm; and

Fourth Proposition: That the defendant drove the vehicle on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the defendant's vehicle, when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue, or red and blue lights) (amber or yellow)] warning lights; and

Fifth Proposition: That the defendant failed to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, be prepared to stop, and leave a safe distance until safely passed the authorized emergency vehicle, and yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard for safety and traffic conditions.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

[or]

[9] *First Proposition:* That the defendant caused the death of a firefighter or other emergency medical services personnel in the performance of their official duties [without lawful justification] by driving a vehicle; and

Second Proposition: That the defendant drove the vehicle recklessly; and

Third Proposition: That the defendant drove the vehicle in a manner likely to cause death or great bodily harm; and

Fourth Proposition: That the defendant drove the vehicle on a roadway where changing lanes would be impossible or unsafe, when approaching a stationary authorized emergency vehicle displaying alternately flashing [(red) (red and white) (blue, or red and blue lights) (amber or yellow)] warning lights; and

Fifth Proposition: That the defendant failed to proceed with due caution, reduce the speed of the vehicle, maintain a safe speed for road conditions, and leave a safe distance until safely past the authorized emergency vehicle.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/9-3(e-2) and 9-3(e-3) (West 2020), amended by P.A. 95-467, effective June 1, 2008; 720 ILCS 5/9-3(e-7) and (e-8) (West 2020), amended by P.A. 93-178, effective January 1, 2004; 720 ILCS 5/9-3(e-9) (West 2020), amended by P.A. 93-682, effective January 1, 2005; 720 ILCS 5/9-3(e-7) and (e-8) (West 2020), amended by P.A. 95-591, effective September 10, 2007; 720 ILCS 5/9-3(e-10) (West 2020), amended by P.A. 95-551, effective June 1, 2008; 720 ILCS 5/9-3(e-12) and (e-13) (West 2020), amended by P.A. 95-803, effective January 1, 2009; 720 ILCS 5/9-3(e-15) (West 2020), amended by P.A. 101-173, effective January 1, 2020; 625 ILCS 5/11-907 (West 2021), amended by P.A. 102-0336, effective January 1, 2022.

Give Instruction 7.09A.

Give Instruction 5.01, defining the term “recklessness.”

When applicable, give Instruction 23.79X, defining the term “authorized emergency vehicle.”

When applicable, define the term “construction or maintenance zone.” See Instruction 4.23 on school speed zones.

When applicable, give Instruction 7.09Y (Inferences of “Reckless” Conduct—Reckless Homicide).

When applicable, insert in the blank the name of the victim.

The propositions in paragraph [1] track the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-2) and 720 ILCS 5/9-3(e-3), after enactment of P.A. 95-467, effective June 1, 2008.

The propositions in paragraph [2] track the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-7) and 720 ILCS 5/9-3(e-8), after enactment of P.A. 93-178, effective June 1, 2005.

The propositions in paragraph [3] track the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-7) and (e-8), after enactment of by P.A. 95-591, effective September 10, 2007.

The propositions in paragraph [4] track the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-9), after enactment of P.A. 93-682, effective January 1, 2005.

The propositions in paragraph [5] track the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-10), after enactment of P.A. 95-551, effective June 1, 2008.

The propositions in paragraphs [6] and [7] track the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-12) and (e-13), after enactment of P.A. 95-803, effective January 1, 2009.

The propositions in paragraphs [8] and [9] track the language of the reckless homicide statute as codified in 720 ILCS 5/9-3(e-15), the enactment of P.A. 101-173, effective January 1, 2020.

Because the reckless homicide statute expressly refers to subsection (c) of Section 11-907 of the Illinois Vehicle Code, the bracketed language used in paragraphs [6], [7], [8], and [9] incorporates the requirements of Scott's Law as set forth in Instruction 23.79 and Instruction 23.79A.

The terms "due caution" and "due regard for safety and traffic conditions" in paragraphs [6], [7], [8], and [9] are undefined in the Illinois Vehicle Code, and the Committee takes no position on their meaning.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

Use applicable paragraph and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

7.11 Definition Of Concealment Of Homicidal Death

A person commits the offense of concealment of homicidal death when he knowingly conceals the death of any other person with knowledge that the other person has died by homicidal means.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.4(a) (West 2013).

7.12 Issues In Concealment Of Homicidal Death

To sustain the charge of concealment of homicidal death, the State must prove the following propositions:

First Proposition: That the defendant performed acts which concealed the death of _____; and

Second Proposition: That when the defendant did so he knew that _____ had died by homicidal means.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.4 (West 2013).

Give Instruction 7.11.

Give Instruction 7.13, defining “homicidal means.”

When applicable, give Instruction 7.14, defining “conceals.”

Insert in the blanks the name of the person whose death was concealed.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.13 Definition Of Homicidal Means

The term “homicidal means” means any act[s], lawful or unlawful, of a person which cause[s] the death of another person.

Committee Note

Instruction and Committee Note Approved January 30, 2015

See 720 ILCS 5/9-3.4(b-5) (West 2013).

7.14 Definition Of Conceal

The word “conceal” means the performing of some act or acts for the purpose of preventing or delaying the discovery of a death by homicidal means. “Conceal” means something more than simply withholding knowledge or failing to disclose information.

Committee Note

Instruction and Committee Note Approved January 30, 2015

See 720 ILCS 5/9-3.4(b-5) (West 2013).

See People v. Stiles, 46 Ill. App. 3d 359, 360 N.E.2d 1217 (3d Dist. 1977).

Although the statute does not specifically refer to concealment of the “cause of death,” at least two appellate courts have held the statute includes situations where “the body itself is concealed or where the homicidal nature of death is actively concealed, as in making a homicide appear an accident.” *People v. Vath*, 38 Ill. App. 3d 389, 395, 347 N.E.2d 813 (5th Dist. 1976), cited with approval in *People v. Hummel*, 48 Ill. App. 3d 1002, 1004, 365 N.E.2d 122 (4th Dist. 1977).

7.15 Causation In Homicide Cases Excluding Felony Murder

[(For the offense of _____, in) (In)] order for you to find that the acts of the defendant caused the death of _____, the State must prove beyond a reasonable doubt that defendant's acts [of delivering _____] were a contributing cause of the death and that the death did not result from a cause unconnected with the defendant. However, it is not necessary that you find the acts of the defendant were the sole and immediate cause of death.

Committee Note

The Illinois Supreme Court has held that a defendant's act need not be the sole or immediate cause of death; it is sufficient if the defendant's act contributed to cause the death. *People v. Nere*, 2018 IL 122566, 115 N.E.3d 205; *People v. Brown*, 169 Ill. 2d 132, 661 N.E.2d 287 (1996); *People v. Brackett*, 117 Ill. 2d 170, 510 N.E.2d 877 (1987). See also *People v. Woodard*, 367 Ill. App. 3d 304, 854 N.E.2d 674 (1st Dist. 2006); *People v. Martinez*, 348 Ill. App. 3d 521, 810 N.E.2d 199 (1st Dist. 2004).

Use the bracketed material where the defendant delivered multiple controlled substances to the victim but is charged with drug-induced homicide on the basis of less than all of the controlled substances that were delivered. A modification under such circumstances was approved by the Illinois Supreme Court in *People v. Nere*, 2018 IL 122566, 115 N.E.3d 205.

The Committee recommends that this instruction be given whenever causation is an issue under Section 720 ILCS 9-1(a)(1) (intentional murder), 9-1(a)(2) (knowing murder), or 720 ILCS 5/9-3(a) (involuntary manslaughter and reckless homicide). However, when felony murder (720 ILCS 9-1(a)(3)) is charged and causation is an issue, Instruction 7.15A should also be given.

For the definition of "proximate cause" in aggravated driving under the influence cases, see Instruction 23.28A.

For the definition of "proximate cause" in all other cases, see Instruction 4.24.

When instructing for offenses with different definitions of causation, such as involuntary manslaughter (720 ILCS 5/9.3) and felony endangerment of the life or health of a child (720 ILCS 5/12C-5(d)), use the first bracketed material naming the appropriate offense.

Insert the name of the alleged victim in the second blank.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant." Give Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.06.

7.15A Causation In Felony Murder Cases***Use For Cases Where The Offense Is Alleged To Have Occurred
Before July 1, 2021.***

A person commits the offense of first degree murder when he commits the offense of _____, and the death of an individual results as a direct and foreseeable consequence of a chain of events set into motion by his commission of the offense of _____.

It is immaterial whether the killing is intentional or accidental [(or committed by a confederate without the connivance of the defendant) (or committed by a third person trying to prevent the commission of the offense of _____)].

Committee Note

720 ILCS 5/9-1(a)(3) (West 2013).

In *People v. Hudson*, 222 Ill. 2d 392, 408, 856 N.E.2d 1078 (2006), the supreme court set out the above definition of causation in felony murder cases where the defendant did not perform the acts which caused the death of the deceased. *See also People v. Lowery*, 178 Ill. 2d 462, 467, 687 N.E.2d 973 (1997).

When causation is an issue under section 720 ILCS 5/9-1(a)(1) (intentional murder), 720 ILCS 5/9-1(a)(2) (knowing murder) or 720 ILCS 5/9-3(a) (reckless homicide) as well as felony murder then Instruction 7.15 should also be given.

For the definition of “proximate cause” in aggravated driving under the influence cases, see Instruction 23.28A.

For the definition of “proximate cause” in all other cases, see Instruction 4.24.

Insert in all three blanks the applicable forcible felony.

Use applicable bracketed material in the second paragraph. In some instances neither clause in the bracketed paragraph is appropriate and under those circumstances the sentence should stop after the word “accidental.” *See, e.g., People v. Brackett*, 117 Ill. 2d 170, 510 N.E.2d 877 (1987).

The brackets are provided solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

7.15B Causation In Felony Murder Cases

*Use For Cases Where The Offense Is Alleged To Have Occurred
After June 30, 2021.*

A person commits the offense of first degree murder when he commits the offense of _____, and the death of an individual results as a direct and foreseeable consequence of a chain of events set into motion by his commission of the offense of _____.

It is immaterial whether the killing is intentional or accidental [or committed by a confederate without the connivance of the defendant].

Committee Note

720 ILCS 5/9-1(a)(3) (West 2021), as amended by P.A. 101-0652, effective July 1, 2021.

The Committee does not take a position as to whether P.A. 101-0652 is retroactive.

Use this instruction when giving Instruction 7.01B bracket [4] and Instruction 7.02B bracket [4].

In *People v. Hudson*, 222 Ill. 2d 392, 408, 856 N.E.2d 1078 (2006), the supreme court set out the above definition of causation in felony murder cases in any situation where the defendant did not perform the acts which caused the death of the deceased. *See also People v. Lowery*, 178 Ill. 2d 462, 467, 687 N.E.2d 973 (1997). With the amendment of 720 ILCS 5/9-1(a)(3) by P.A. 101-0652, a defendant may no longer be liable for murder where one resisting the crime causes the death of defendant's co-felon. 720 ILCS 5/9-1(a)(3). This amendment is a legislative rejection of the holdings of *Hudson* and *Lowery*, restricting proximate cause to only those instances where the defendant or his co-felons cause the death of a person during the commission of a forcible felony.

When causation is an issue under section 720 ILCS 5/9-1(a)(1) (intentional murder), 720 ILCS 5/9-1(a)(2) (knowing murder) or 720 ILCS 5/9-3(a) (reckless homicide) as well as felony murder then Instruction 7.15 should also be given.

For the definition of "proximate cause" in aggravated driving under the influence cases, see Instruction 23.28A.

For the definition of "proximate cause" in all other cases, see Instruction 4.24.

Insert in the blanks the applicable forcible felony.

Where the defendant causes the killing, the sentence in the second paragraph should stop after the word "accidental." *See, e.g., People v. Brackett*, 117 Ill. 2d 170, 510 N.E.2d 877 (1987).

7.16 Definition Of Intentional Homicide Of An Unborn Child

A person commits the offense of intentional homicide of an unborn child if, in performing the acts which cause the death of an unborn child, [without lawful justification,] he

[1] intended to cause the death of or do great bodily harm to the pregnant woman or her unborn child;

[or]

[2] knew that such acts would cause death or great bodily harm to the pregnant woman or her unborn child;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to the pregnant woman or her unborn child;

and

[4] he knew that the woman was pregnant.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2 (West 2013).

Give Instruction 7.17.

Give Instructions 7.24 and 7.25.

Use applicable bracketed paragraphs. *See People v. Gillespie*, 276 Ill. App. 3d 495, 659 N.E.2d 12 (1st Dist. 1995) (holding that the defendant's actual knowledge of pregnancy constitutes an element of offense).

Use the phrase "without lawful justification" whenever an instruction is to be given on an affirmative defense contained in Article 7 (720 ILCS 5/7-1 *et seq.*). *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.17 Issues In Intentional Homicide Of An Unborn Child

To sustain the charge of intentional homicide of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of _____; and

Second Proposition: That when the defendant did so, he

[1] intended to cause the death of or do great bodily harm to _____ or her unborn child;

[or]

[2] knew that such acts would cause death or great bodily harm to _____ or her unborn child;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to _____ or her unborn child;

and

Third Proposition: That the defendant knew _____ was pregnant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2 (West 2013).

Give Instruction 7.16.

Give Instruction 7.24, defining “unborn child.”

Use applicable bracketed paragraphs. The bracketed numbers correspond to the alternatives of the same number in Instruction 7.16, the definitional instruction for this offense. Select the corresponding alternatives to the alternatives selected from the definitional instruction.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.18 Definition Of Voluntary Manslaughter Of An Unborn Child—Provocation

A person commits the offense of voluntary manslaughter of an unborn child when he kills an unborn child [without lawful justification] if, in performing the acts which cause the death, he acts under a sudden and intense passion resulting from serious provocation by a person, and he

[1] intends to kill or do great bodily harm to that person,

[or]

[2] knows that such acts will cause death to that person,

[or]

[3] knows that such acts create a strong probability of death or great bodily harm to that person, but he negligently or accidentally kills the unborn child.

Serious provocation is conduct sufficient to excite an intense passion in a reasonable person.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2.1(a) (West 2013).

Give Instruction 7.19A or 7.19B.

Give Instruction 7.24, defining “unborn child.”

Give Instruction 7.25, defining “person as not including the pregnant woman whose unborn child is killed.”

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Section 9-2.1(a) contains no mental state applicable to the defendant’s endeavoring to kill the person causing the serious provocation. Because of Sections 4-3 and 4-9, and cases interpreting those sections (*see People v. Whitlow*, 89 Ill. 2d 322, 433 N.E.2d 629 (1982); *People v. Langford*, 195 Ill. App. 3d 366, 552 N.E.2d 274 (4th Dist. 1990)), the Committee believes that voluntary manslaughter of an unborn child (under Section 9-2.1(a)) is not an absolute liability offense and must contain some mental states. The Committee decided to use those mental states shown in above paragraphs [1], [2], and [3] because these mental states are consistent with those required for second degree murder of a person and the former offense of voluntary manslaughter.

This latter consideration is particularly important because the Committee believes the Illinois Supreme Court decision in *People v. Reddick*, 123 Ill. 2d 184, 526 N.E.2d 141 (1988), is applicable to the relationship between voluntary manslaughter of an unborn child—provocation and intentional homicide of an unborn child. See Committee Note to Instructions 7.19A and 7.19B.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.18A Definition Of Voluntary Manslaughter Of An Unborn Child—Belief In Justification

A person commits the crime of voluntary manslaughter of an unborn child when he kills an unborn child [without lawful justification] if, in performing the acts which cause the death, he

[1] intends to kill or do great bodily harm to the pregnant woman or her unborn child,

[or]

[2] knows that such acts will cause death to the pregnant woman or her unborn child,

[or]

[3] knows that such acts create a strong probability of death or great bodily harm to the pregnant woman or her unborn child, and, at the time of the killing, he believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2.1(a) (West 2013).

Give Instruction 7.19A.

Give Instruction 7.24, defining “unborn child.”

Give Instruction 7.25, defining “person as not including the pregnant woman whose unborn child is killed.”

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 720. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Even though the mental state set forth in Section 9-2.1(b) is that the accused “intentionally or knowingly kills an unborn child,” the Committee elaborated upon those mental states, as shown in paragraphs [1], [2], and [3] above. The Committee did so in order to meld the charges of intentional homicide of an unborn child and voluntary manslaughter of an unborn child (under Section 9-2.1(b)) into one issues instruction having the same mental states. (*See* Instruction 7.19A and the discussion of *People v. Reddick*, 123 Ill. 2d 184, 526 N.E.2d 141(1988), in that instruction’s Committee Note.) The Committee believes that the elaborated mental states contained in this instruction are consistent with the “intentionally or knowingly” language of Section 9-2.1(b).

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.19A Issues In Intentional Homicide Of An Unborn Child When The Jury Is Also To Be Instructed On Voluntary Manslaughter Of An Unborn Child—Provocation By The Pregnant Woman

To sustain the charge of intentional homicide of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of _____; and

Second Proposition: That when the defendant did so, he

[1] intended to kill or do great bodily harm to the unborn child of _____;

[or]

[2] knew that his acts would cause death to the unborn child of _____;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to the unborn child of _____.

If you find from your consideration of all the evidence that both of these propositions have been proved beyond a reasonable doubt, you should find the defendant guilty of intentional homicide of an unborn child and your deliberations should end.

If you find from your consideration of all the evidence that the First Proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty of intentional homicide of an unborn child and not guilty of voluntary manslaughter of an unborn child and your deliberations should end.

If you find from your consideration of all the evidence that the First Proposition has been proved beyond a reasonable doubt, but the Second Proposition has not been proved beyond a reasonable doubt, you should now consider the following proposition:

Third Proposition: That when the defendant performed the acts which caused the death of the pregnant woman's unborn child, he

[1] intended to kill or do great bodily harm to the pregnant woman;

[or]

[2] knew that his acts would cause death to the pregnant woman;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to the pregnant woman.

If you find from your consideration of all the evidence that this Third Proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty of intentional homicide of an unborn child and not guilty of voluntary manslaughter of an unborn child and your deliberations should end.

If you find from your consideration of all the evidence that this Third Proposition has been proved beyond a reasonable doubt, you should go on with your deliberations to

decide whether the defendant is guilty of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child.

To sustain the charge of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child, the State must prove beyond a reasonable doubt the following additional proposition:

That the defendant, at the time he performed the acts which caused the death of the unborn child of _____, did not act under a sudden and intense passion resulting from serious provocation by the pregnant woman he endeavored to kill, but he negligently or accidentally killed the unborn child of _____.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt this additional proposition, you should find the defendant guilty of intentional homicide of an unborn child.

If you find from your consideration of all the evidence that the State has not proved beyond a reasonable doubt this additional proposition, you should find the defendant guilty of voluntary manslaughter of an unborn child.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2(a) and 9-2.1(a) (West 2013).

Give Instruction 7.18.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instructions from Chapter 24–25.00. Any additional proposition to be considered by the jury pursuant to Chapter 24–25.00 must be added to this instruction as a Third Proposition which the State must prove beyond a reasonable doubt *before* the jury may consider whether the State has proved beyond a reasonable doubt the additional proposition in its determination as to whether the defendant is guilty of murder or voluntary manslaughter.

Because the Committee believes the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child is essentially the same as the relationship between murder and voluntary manslaughter (as those offenses were defined in Sections 9-1 and 9-2, prior to the enactment of first degree murder and second degree murder under P.A. 84-1450), the Committee has chosen for this instruction to follow the format used in Instruction 7.02B of the Third Edition.

The Committee also believes that the analysis of the Illinois Supreme Court in *People v. Reddick*, 123 Ill. 2d 184, 526 N.E.2d 141 (1988), is applicable to the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child. In *Reddick*, the supreme court reassessed the elements of murder and voluntary manslaughter in cases in which a jury is to be instructed on both charges. The supreme court stated the following:

“Thus, under the 1961 Code, if a defendant in a murder trial presents sufficient evidence to raise issues which would reduce the charge of murder

to voluntary manslaughter, then to sustain the murder conviction, the People must prove beyond a reasonable doubt that those defenses are meritless, and must also prove beyond a reasonable doubt the statutory elements of murder.

The burden-of-proof instructions regarding both voluntary manslaughter and murder in both of these cases were thus incorrect in placing upon the People the burden of proving the existence of intense passion or unreasonable belief in justification. The instructions should have placed upon the People the burden of disproving the existence of either of these two states of mind."

Reddick, 123 Ill. 2d at 197.

This instruction follows the mandate of the supreme court by requiring the State, in order to obtain a conviction for intentional homicide of an unborn child, to prove beyond a reasonable doubt each of the elements thereof and then further to prove beyond a reasonable doubt that a reducing factor which reduces that charge to voluntary manslaughter of an unborn child is *not* present.

Because the elements of intentional homicide of an unborn child and voluntary manslaughter of an unborn child are identical except for the presence of a reducing factor, this issues instruction need not contain a separate set of propositions constituting the elements of voluntary manslaughter of an unborn child. The question of the existence of the reducing factor is one which the jury need not consider until it has first found that the State has proved beyond a reasonable doubt each of the elements of intentional homicide of an unborn child.

In view of *Reddick*, the Committee has not provided a separate issues instruction on the charge of voluntary manslaughter of an unborn child—provocation by the pregnant woman because the Committee believes that this charge is not likely to be brought by the State without a defendant also being charged with intentional homicide of an unborn child.

Insert in the blanks the name of the pregnant woman. Use this instruction only if the pregnant woman is the source of the serious provocation. If another person is the source of the serious provocation, use Instruction 7.19B.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

**7.19B Issues In Voluntary Manslaughter Of An Unborn Child—Provocation
By A Person Other Than The Pregnant Woman—Transferred Intent**

To sustain the charge of voluntary manslaughter of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of _____; and

Second Proposition: That when the defendant did so, he

[1] intended to kill or do great bodily harm to a person other than _____;

[or]

[2] knew that his acts would cause death to a person other than _____;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to a person other than _____;

and

Third Proposition: That the defendant, at the time he performed the acts which caused the death of the unborn child of _____, acted under a sudden and intense passion resulting from serious provocation by the person he endeavors to kill, but he negligently or accidentally killed the unborn child of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2.1(a) (West 2013).

This instruction is to be given only when the defendant is charged with voluntary manslaughter of an unborn child under a “transferred intent” theory. In this situation, the State is alleging that the defendant, while acting under a passion caused by serious provocation, endeavored to kill a person (other than a pregnant woman), but he negligently or accidentally killed an unborn child.

In a transferred intent situation, the offense of intentional homicide of an unborn child is never an issue, because there is no allegation that the defendant either intentionally or knowingly acted to kill either the pregnant woman or the unborn child. The jury need only consider whether the State has proved all the elements of voluntary manslaughter of an unborn child beyond a reasonable doubt.

Insert in the blanks the name of the pregnant woman.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.19C Issues In Intentional Homicide Of An Unborn Child When The Jury Is Also To Be Instructed On Voluntary Manslaughter Of An Unborn Child—Belief In Justification

To sustain either the charge of intentional homicide of an unborn child or the charge of voluntary manslaughter of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of _____; and

Second Proposition: That when the defendant did so, he

[1] intended to kill or do great bodily harm to _____ or her unborn child;

[or]

[2] knew that his acts would cause death to _____ or her unborn child;

[or]

[3] knew that his acts created a strong probability of death or great bodily harm to _____ or her unborn child.

and

Third Proposition: That the defendant was not justified in using the force that he used.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty [of intentional homicide of an unborn child and not guilty of voluntary manslaughter] and your deliberations [on these charges] should end.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should go on with your deliberations to decide whether the defendant is guilty of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child.

To sustain the charge of intentional homicide of an unborn child instead of voluntary manslaughter of an unborn child, the State must prove beyond a reasonable doubt the following additional proposition:

That the defendant, at the time he performed the acts which caused the death of the unborn child of _____, did not believe that circumstances existed which would have justified the deadly force he used.

If you find from your consideration of all the evidence that this additional proposition has been proved beyond a reasonable doubt, you should find the defendant guilty of intentional homicide of an unborn child.

If you find from your consideration of all the evidence that this additional proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty of voluntary manslaughter of an unborn child.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-2.1(a) (West 2013).

Give Instruction 7.18A.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instructions from Chapter 24–25.00. Any additional proposition to be considered by the jury pursuant to Chapter 24–25.00 must be added to this instruction as a Fourth Proposition which the State must prove beyond a reasonable doubt *before* the jury may consider whether the State has proved beyond a reasonable doubt the additional proposition in its determination as to whether the defendant is guilty of murder or voluntary manslaughter.

Because the Committee believes the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child is essentially the same as the relationship between murder and voluntary manslaughter (as those offenses were defined in Chapter 38, Sections 9-1 and 9-2, prior to the enactment of first degree murder and second degree murder under P.A. 84-1450), the Committee has chosen for this instruction to follow the format used in Instruction 7.02C of the Third Edition.

The Committee also believes that the analysis of the Illinois Supreme Court in *People v. Reddick*, 123 Ill. 2d 184, 526 N.E.2d 141 (1988), is applicable to the relationship between intentional homicide of an unborn child and voluntary manslaughter of an unborn child. In *Reddick*, the supreme court reassessed the elements of murder and voluntary manslaughter in cases in which a jury is to be instructed on both charges. The supreme court stated the following:

“Thus, under the 1961 Code, if a defendant in a murder trial presents sufficient evidence to raise issues which would reduce the charge of murder to voluntary manslaughter, then to sustain the murder conviction, the People must prove beyond a reasonable doubt that those defenses are meritless and must also prove beyond a reasonable doubt the statutory elements of murder.

The burden-of-proof instructions regarding both voluntary manslaughter and murder in both of these cases were thus incorrect in placing upon the People the burden of proving the existence of intense passion or unreasonable belief in justification. The instructions should have placed upon the People the burden of disproving the existence of either of these two states of mind.”

Reddick, 123 Ill. 2d at 197.

This instruction follows the mandate of the supreme court by requiring the State, in order to obtain a conviction for intentional homicide of an unborn child, to prove beyond a reasonable doubt each of the elements thereof and then further to prove beyond a reasonable doubt that a reducing factor which reduces that charge to voluntary manslaughter of an unborn child is *not* present.

Because the elements of intentional homicide of an unborn child and voluntary manslaughter of an unborn child are identical except for the presence of a reducing factor, this issues instruction need not contain a separate set of propositions

constituting the elements of voluntary manslaughter of an unborn child. The question of the existence of the reducing factor is one which the jury need not consider until it has first found that the State has proved beyond a reasonable doubt each of the elements of intentional homicide of an unborn child.

In view of *Reddick*, the Committee has not provided a separate issues instruction on the charge of voluntary manslaughter of an unborn child—belief in justification because the Committee believes that this charge is not likely to be brought by the State without a defendant also being charged with intentional homicide of an unborn child.

Insert in the blanks the name of the pregnant woman.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.20 Definition Of Involuntary Manslaughter Of An Unborn Child

A person commits the offense of involuntary manslaughter of an unborn child when he unintentionally causes the death of an unborn child [without lawful justification] by acts, whether lawful or unlawful, which are performed recklessly and are likely to cause death or great bodily harm.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.2 (West 2013).

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

7.21 Issues In Involuntary Manslaughter Of An Unborn Child

To sustain the charge of involuntary manslaughter of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant performed the acts which caused the death of the unborn child of _____; and

Second Proposition: That the defendant performed those acts recklessly; and

Third Proposition: That those acts were likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.2 (West 2013).

Give Instruction 7.20.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Insert in the blank the name of the pregnant woman.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.22 Definition Of Reckless Homicide Of An Unborn Child

A person commits the offense of reckless homicide of an unborn child when he unintentionally causes the death of an unborn child [without lawful justification] by driving a motor vehicle recklessly and in a manner likely to cause death or great bodily harm.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.2 (West 2013).

Use the phrase “without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

7.23 Issues In Reckless Homicide Of An Unborn Child

To sustain the charge of reckless homicide of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant caused the death of the unborn child of _____ by driving a motor vehicle; and

Second Proposition: That the defendant drove the motor vehicle recklessly; and

Third Proposition: That the defendant drove the motor vehicle in a manner likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-3.2 (West 2013).

Give Instruction 7.22.

When an affirmative defense instruction is to be given, combine this instruction with the appropriate instruction from Chapter 24–25.00.

Insert in the blank the name of the pregnant woman.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

7.24 Definition Of Unborn Child

The term “unborn child” means any individual of the human species from fertilization until birth.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2(b)(1), 9-2.1(d)(1), and 9-3.2(c)(1) (West 2013).

This instruction should be given whenever Instruction 7.16, 7.18, or 7.22 is given.

7.25 Definition Of Person As Not Including The Pregnant Woman Whose Unborn Child Is Killed

The word “person” does not include the pregnant woman whose unborn child is killed.

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2(b)(2), 9-2.1(d)(2), and 9-3.2(c)(2) (West 2013).

This instruction should be given whenever Instruction 7.15, 7.18, 7.20, or 7.22 is given.

7.26 Exclusion Of Acts Performed Under Illinois Abortion Law Or During Medical Procedures From Homicides Involving Unborn Children

The offense of [(intentional homicide) (voluntary manslaughter) (involuntary manslaughter) (reckless homicide)] of an unborn child does not apply to acts which cause the death of an unborn child if those acts are performed [(during an abortion to which the pregnant woman has consented) (pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment)].

Committee Note

Instruction and Committee Note Approved January 30, 2015

720 ILCS 5/9-1.2(c), 9-2.1(e), and 9-3.2(d) (West 2013).

The Committee believes having this instruction available might prove helpful if the court, in its discretion, deemed it advisable to instruct the jury on what a case before it does *not* concern.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

7.27 Definition Of Drug Induced Homicide—Delivery Of Controlled Substances

A person commits the offense of drug induced homicide when he knowingly delivers to another a substance containing _____, a controlled substance and any person's death is caused by the [(injection) (inhalation) (absorption) (ingestion)] of any amount of that controlled substance.

Committee Note

720 ILCS 5/9-3.3 (West 2019), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992, amended by P.A. 100-404, effective January 1, 2018.

Give Instruction 7.28.

Insert in the blanks the name of the controlled substance at issue.

If the court chooses to define the word "deliver," use Instruction 17.05A.

Use applicable bracketed material.

7.28 Issues In Drug Induced Homicide—Delivery Of Controlled Substances

To sustain the charge of drug induced homicide, the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered to another a substance containing _____, a controlled substance; and

Second Proposition: That any person [(injected) (inhaled) (absorbed) (ingested)] any amount of that controlled substance; and

Third Proposition: That _____ death was caused by that [(injection) (inhalation) (absorption) (ingestion)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/9-3.3 (West 2019), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992, amended by P.A. 100-404, effective January 1, 2018.

Give Instruction 7.27.

Insert the name of the controlled substance at issue in the blank in the first proposition.

Insert the name of the victim in the blank in the fourth proposition. Note that the named victim inserted in the third proposition need not be the same person as the person engaging in the conduct described in the second proposition.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

7.29 Definition Of Drug Induced Homicide—Delivery Of Objects Or Segregated Parts Containing LSD

A person commits the offense of drug induced homicide when he knowingly delivers to another more than 10 [(objects) (segregated parts of an object)] containing in them or having on them any amount of any substance containing lysergic acid diethylamide (LSD), and any person dies as a result of the [(injection) (inhalation) (ingestion)] of any amount of that LSD.

Committee Note

720 ILCS 5/9-3.3 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.30.

If the court chooses to define the word “deliver,” give Instruction 17.05A.

The Committee has divided the definitional and issues instructions for this offense into two separate sets of instructions—one set dealing with delivery of controlled substances as determined by weight (Instructions 7.27 and 7.28), and the other set dealing with delivery of LSD as contained in separate objects or multiple segregated parts of the same object (Instructions 7.29 and 7.30). The Committee believes that this division will avoid jury confusion.

Use applicable bracketed material.

7.30 Issues In Drug Induced Homicide—Delivery Of Objects Or Segregated Parts Containing LSD

To sustain the charge of drug induced homicide, the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered to another more than 10 [(objects) (segregated parts of an object)] containing in them or having on them any amount of any substance containing lysergic acid diethylamide (LSD); and

Second Proposition: That any person [(injected) (inhaled) (ingested)] any amount of that LSD; and

Third Proposition: That _____ died as a result of that [(injection) (inhalation) (ingestion)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/9-3.3 (West 1992) (formerly Ill.Rev.Stat. ch. 38, § 9-3.3 (1991)), added by P.A. 85-1259, effective January 1, 1989, and amended by P.A. 87-1198, effective September 25, 1992.

Give Instruction 7.29.

Insert the name of the victim in the blank in the third proposition. Note that the named victim inserted in the third proposition need not be the same person as the person engaging in the conduct described in the second proposition.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Chapter 8.00

KIDNAPPING

SYNOPSIS

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8.01 Definition Of Kidnapping

A person commits the offense of kidnapping when he knowingly and

[1] secretly confines another person against his will.

[or]

[2] by force or by threat of imminent force carries another person from one place to another with intent secretly to confine that other person against his will.

[or]

[3] by deceit or enticement induces another person to go from one place to another place with intent secretly to confine that other person against his will.

Committee Note

720 ILCS 5/10-1 (West 2020).

When applicable, give Instruction 8.01A or 8.01B.

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.01A Confinement Of A Child Under Age 13

Confinement of a child under the age of 13 years is against that child's will if that confinement is without the consent of that child's parent or legal guardian.

Committee Note

720 ILCS 5/10-1(b) (West 2020).

See Instruction 8.04.

8.01B Confinement Of A Person With A Severe Or Profound Intellectual Disability

Confinement of a person with a severe or profound intellectual disability is against that person's will if that confinement is without the consent of that person's parent or legal guardian.

Committee Note

720 ILCS 5/10-1(b) (West 2020).

Give Instruction 11.65G, defining "severe or profound intellectual disability."

See Instruction 8.04.

8.02 Issues In Kidnapping

To sustain the charge of kidnapping, the State must prove the following propositions:

First Proposition: That the defendant acted knowingly; and

Second Proposition: That the defendant secretly confined _____ against [(his) (her)] will.

[or]

Second Proposition: That the defendant, by force or threat of imminent force, carried _____ from one place to another place; and

Third Proposition: That when the defendant did so, he intended secretly to confine _____ against [(his) (her)] will.

[or]

Second Proposition: That the defendant, by deceit or enticement, induced _____ to go from one place to another place; and

Third Proposition: That when the defendant did so, he intended secretly to confine _____ against [(his) (her)] will.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-1 (West 2020).

Insert in the blanks the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.03 Reserved

8.04 Definition Of Aggravated Kidnapping

A person who kidnaps another commits the offense of aggravated kidnapping when he

[1] kidnaps with the intent to obtain ransom from the person kidnapped or from any other person.

[or]

[2] takes as his victim [(a child under the age of 13 years) (a person with a severe or profound intellectual disability)].

[or]

[3] [(inflicts great bodily harm, other than by the discharge of a firearm) (commits _____)] upon the victim.

[or]

[4] [(wears a hood, robe, or mask) (conceals his identity)].

[or]

[5] does so while armed with a dangerous weapon other than a firearm.

[or]

[6] does so while armed with a firearm.

[or]

[7] during the commission of the offense of kidnapping, he personally discharges a firearm.

[or]

[8] during the commission of the offense of kidnapping, he personally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

Committee Note

720 ILCS 5/10-2 (West 2020).

Give Instruction 8.01 and either Instruction 8.05, 8.05A, or 8.05B. The underlying offense of kidnapping can be committed in one of three ways: (1) secret confinement (720 ILCS 5/10(a)(1)); (2) carrying another by force or threat of imminent force (720 ILCS 5/10-1(a)(2)); or (3) inducing travel by deceit or enticement (720 ILCS 5/10-1(a)(3)). When the defendant is charged under Section 10-1(a)(1), give this instruction and Instruction 8.05. When the defendant is charged under Section 10-1(a)(2), give this instruction and Instruction 8.05A. When the defendant is charged under Section 10-1(a)(3), give this instruction and Instruction 8.05B.

Give Instruction 8.01A when the defendant is charged with confining a child under the age of 13 years.

Give Instruction 8.01B when the defendant is charged with confining a person with a severe or profound intellectual disability.

Give Instruction 11.65G when the victim is alleged to be a person with a severe or profound intellectual disability.

Give Instruction 8.04A, defining the word “ransom” when paragraph [1] is used.

In paragraph [3], insert in the blank the name of the applicable felony and give the instruction defining that felony immediately following this instruction.

When paragraph [5] is used, give the definition of the term “dangerous weapon” which is found in 720 ILCS 5/33A-1. See Committee Note to Instruction 4.17.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.04A Definition Of Ransom

The word “ransom” means money, benefit, or other valuable thing or concession.

Committee Note

720 ILCS 5/10-2(a) (West 2020).

Give this instruction when paragraph [1] of Instruction 8.04 is used.

8.05 Issues In Aggravated Kidnapping—Kidnapping By Secret Confinement

To sustain the charge of aggravated kidnapping, the State must prove the following propositions:

First Proposition: That the defendant secretly confined _____ against [(his) (her)] will;

Second Proposition: That the defendant acted knowingly; and

Third Proposition: That the defendant acted for the purpose of obtaining ransom from _____ or from any other person.

[or]

Third Proposition: That _____ was [(a child under the age of 13 years who was confined without the consent of [(his) (her)] parent or legal guardian) (a person with a severe or profound intellectual disability who was confined without the consent of [(his) (her)] legal guardian)].

[or]

Third Proposition: That the defendant [(inflicted great bodily harm, other than by the discharge of a firearm) (committed _____)] upon _____.

[or]

Third Proposition: That the defendant [(wore a hood, robe, or mask) (concealed his identity)].

[or]

Third Proposition: That the defendant during the commission of the offense was armed with a dangerous weapon, other than a firearm.

[or]

Third Proposition: That the defendant during the commission of the offense was armed with a firearm.

[or]

Third Proposition: That the defendant during the commission of the offense personally discharged a firearm.

[or]

Third Proposition: That the defendant during the commission of the offense personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-1(a) and 5/10-2 (West 2020).

Give Instruction 8.04.

See the Committee Note to Instruction 8.04 concerning whether to give Instruction 8.05, 8.05A, or 8.05B.

Insert in the appropriate blank the name of the victim or specific felony committed. See Committee Note to Instruction 8.04.

Use applicable propositions and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.05A Issues In Aggravated Kidnapping—Kidnapping By Force Or Threat

To sustain the charge of aggravated kidnapping, the State must prove the following propositions:

First Proposition: That the defendant acted knowingly; and

Second Proposition: That the defendant, by force or threat of imminent force, carried _____ from one place to another place; and

Third Proposition: That when the defendant did so, he intended secretly to confine _____ against [(his) (her)] will; and

Fourth Proposition: That the defendant acted for the purpose of obtaining ransom from _____ or from any other person.

[or]

Fourth Proposition: That _____ was [(a child under the age of 13 years who was confined without the consent of [(his) (her)] parent or legal guardian) (a person with a severe or profound intellectual disability who was confined without the consent of [(his) (her)] legal guardian)].

[or]

Fourth Proposition: That the defendant [(inflicted great bodily harm, other than by the discharge of a firearm), (committed _____)] upon _____.

[or]

Fourth Proposition: That the defendant [(wore a hood, robe, or mask) (concealed his identity)].

[or]

Fourth Proposition: That the defendant during the commission of the offense was armed with a dangerous weapon, other than a firearm.

[or]

Fourth Proposition: That the defendant during the commission of the offense was armed with a firearm.

[or]

Fourth Proposition: That the defendant during the commission of the offense personally discharged a firearm.

[or]

Fourth Proposition: That the defendant during the commission of the offense personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-1(a)(2) and 5/10-2 (West 2020).

Give Instruction 8.04.

See the Committee Note to Instruction 8.04 concerning whether to give Instruction 8.05, 8.05A, or 8.05B.

Insert in the appropriate blank the name of the victim or specific felony committed. See Committee Note to Instruction 8.04.

Use applicable propositions and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.05B Issues In Aggravated Kidnapping—Kidnapping By Deceit Or Enticement

To sustain the charge of aggravated kidnapping, the State must prove the following propositions:

First Proposition: That the defendant acted knowingly; and

Second Proposition: That the defendant, by deceit or enticement, induced _____ to go from one place to another place; and

Third Proposition: That when the defendant did so, he intended secretly to confine _____ against [(his) (her)] will; and

Fourth Proposition: That the defendant acted for the purpose of obtaining ransom from _____ or from any other person.

[or]

Fourth Proposition: That _____ was [(a child under the age of 13 years who was confined without the consent of [(his) (her)] parent or legal guardian) (a person with a severe or profound intellectual disability who was confined without the consent of [(his) (her)] legal guardian)].

[or]

Fourth Proposition: That the defendant [(inflicted great bodily harm, other than by the discharge of a firearm), (committed _____)] upon _____.

[or]

Fourth Proposition: That the defendant [(wore a hood, robe, or mask) (concealed his identity)].

[or]

Fourth Proposition: That the defendant during the commission of the offense was armed with a dangerous weapon, other than a firearm.

[or]

Fourth Proposition: That the defendant during the commission of the offense was armed with a firearm.

[or]

Fourth Proposition: That the defendant during the commission of the offense personally discharged a firearm.

[or]

Fourth Proposition: That the defendant during the commission of the offense personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-1(a)(3) and 5/10-2 (West 2020).

Give Instruction 8.04.

See the Committee Note to Instruction 8.04 concerning whether to give Instruction 8.05, 8.05A, or 8.05B.

Insert in the appropriate blank the name of the victim or specific felony committed. See Committee Note to Instruction 8.04.

Use applicable propositions and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.06 Definition Of Unlawful Restraint

A person commits the offense of unlawful restraint when he knowingly and without legal authority detains another person.

Committee Note

720 ILCS 5/10-3 (West 2020).

Give Instruction 8.07.

If legal authority is a question of fact, an instruction defining legal authority should be given as applied to the facts in the case. See, for example, Section 107-3 (arrest by private person), and Section 16A-6 (merchant's defense). See also Article 7 of Chapter 720.

8.06A Definition Of Aggravated Unlawful Restraint

A person commits the offense of aggravated unlawful restraint when he knowingly and without legal authority detains another person while using a deadly weapon.

Committee Note

720 ILCS 5/10-3.1 (West 2020).

Give Instruction 8.07A.

If legal authority is a question of fact, an instruction defining legal authority should be given as applied to the facts in the case. See e.g., 720 ILCS 5/16-26 (merchant's defense) and 725 ILCS 5/107-3 (arrest by private person). See also 720 ILCS 5/7-1 *et seq.* (justifiable use of force; exoneration).

The Committee notes that the legislative phrase “while using a deadly weapon” in 720 ILCS 5/10-3.1 contrasts with the phrase “while armed with a dangerous weapon” found elsewhere in Chapter 720 (See e.g., Sections 10-2(a)(5), 10-4(a)(1), and 33A-2), and defined in 720 ILCS 33A-1(c)(1). The Committee recommends that no definition of the phrase “while using a deadly weapon” be given. See also Instruction 11.03 (regarding the “use of a deadly weapon”).

8.07 Issue In Unlawful Restraint

To sustain the charge of unlawful restraint, the State must prove the following proposition:

That the defendant knowingly and without legal authority detained _____.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-3 (West 2020).

Give Instruction 8.06.

When the question of legal authority is involved, see Committee Note to Instruction 8.06.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.07A Issues In Aggravated Unlawful Restraint

To sustain the charge of aggravated unlawful restraint, the State must prove the following propositions:

First Proposition: That the defendant knowingly and without legal authority detained _____; and

Second Proposition: That the defendant did so while using a deadly weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-3.1 (West 2020).

Give Instruction 8.06A.

When the question of legal authority is involved, see Committee Note to Instruction 8.06A.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.08 Merchant's Defense To Unlawful Restraint**Committee Note**

720 ILCS 5/16-26 (West 2020).

The Committee decided not to include an instruction on this defense because so few cases are brought under this statute.

8.09 Definition Of Forcible Detention

A person commits the offense of forcible detention when he holds an individual hostage without lawful authority for the purpose of obtaining performance by a third person of demands made by the person holding the hostage, and

[1] the person holding the hostage is armed with a dangerous weapon.

[or]

[2] the hostage is known to the person holding him to be [(a peace officer) (a correctional employee)] engaged in the performance of his official duties.

Committee Note

720 ILCS 5/10-4 (West 2020).

Give Instruction 8.10.

Give Instruction 4.08, defining the term “peace officer,” when paragraph [2] is given.

When appropriate, give the definition of the term “armed with a dangerous weapon” found in 720 ILCS 5/33A-1(c)(1). See Committee Note to Instruction 4.17.

If lawful authority is a question of fact, an instruction defining lawful authority should be given as applied to the facts in the case. See e.g., 725 ILCS 5/107-3 (arrest by private person). See also 720 ILCS 5/7-1 *et seq.* (justifiable use of force; exoneration).

When appropriate, give the definition of the term “armed with a dangerous weapon” found in 720 ILCS 5/33A-1(c)(1). See Committee Note to Instruction 4.17.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.10 Issues In Forcible Detention

To sustain the charge of forcible detention, the State must prove the following propositions:

First Proposition: That the defendant held _____ hostage without lawful authority; and

Second Proposition: That _____ was held hostage for the purpose of obtaining performance by a third person upon the demand of the defendant; and

Third Proposition: That the defendant was armed with a dangerous weapon.

[or]

Third Proposition: That _____ was known to the defendant to be [(a peace officer) (a correctional employee)] engaged in the performance of his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-4 (West 2020).

Give Instruction 8.09.

When the question of legal authority is involved, see Committee Note to Instruction 8.09.

Insert in the blanks the name of the person held hostage.

Use applicable propositions and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.11 Definition Of Child Abduction

A person commits the offense of child abduction when

[1] he intentionally violates any terms of a court order granting sole or joint custody, care, or possession of a child to another, by concealing or detaining the child or removing the child from the jurisdiction of the court.

[or]

[2] he intentionally violates a court order prohibiting him from concealing or detaining a child or removing a child from the jurisdiction of the court.

[or]

[3] he intentionally conceals, detains, or removes the child without the consent of the child's mother or lawful custodian if the person is a putative father and [(paternity of the child has not been legally established) (paternity of the child has been legally established but no custody order has been entered)].

[or]

[3a] she is a mother who has [(abandoned a child) (relinquished custody of a child)] and intentionally [(conceals) (removes)] the child from an unadjudicated father who has provided sole ongoing care and custody of the child in the mother's absence.

[or]

[4] he intentionally [(conceals) (removes)] a child from a parent, after [(filing a petition) (being served with process)] in an action affecting [(marriage) (paternity)], but before issuance of a [(temporary) (final)] order determining custody.

[or]

[5] he intentionally [(fails to return) (refuses to return) (impedes the return of)] the child to the child's lawful custodian in Illinois at the expiration of visitation rights outside the State.

[or]

[6] he, being a parent of a child and [(being) (having been)] married to the child's other parent, knowingly conceals the child for 15 days when there has been no court order of custody, and fails to make reasonable attempts within the 15-day period to notify the other parent as to the specific whereabouts of the child, including a means by which to [(contact such child) (arrange reasonable visitation) (arrange reasonable contact)] with the child.

[or]

[7] he, being a parent of the child, [(being) (having been)] married to the child's other parent and there has been no court order for custody, knowingly [(conceals) (detains) (removes)] the child with [(physical force) (threat of physical force)].

[or]

[8] he knowingly [(conceals) (detains) (removes)] a child for [(payment) (promise of

payment)] at the instruction of a person who has no legal right to custody of the child.

[or]

[9] he knowingly retains in this State for 30 days a child removed from another state [(without the consent of the lawful custodian) (in violation of a court order of custody)].

[or]

[10] he intentionally [(lures) (attempts to lure)] a child [(under the age of 17) (while traveling to or from a primary or secondary school)] into a [(motor vehicle) (building) (house trailer) (dwelling place)] without the consent of the child's [(parent) (lawful custodian)] for other than a lawful purpose.

[or]

[11] he knowingly [([(destroys) (alters) (conceals) (disguises)] physical evidence) (furnishes false information)] with the intent to [(obstruct) (prevent)] efforts to locate the abducted child.

Committee Note

720 ILCS 5/10-5 (West 2020).

Give Instruction 8.16.

When applicable, give Instruction 8.12, defining “putative father,” Instruction 8.13, defining the word “child,” and Instruction 8.14, defining the word “detains.”

When the defendant is charged with child abduction under Section 10-5(b)(10), give IPI 8.11A.

Several subsections of Section 10-5 refer to the existence of a valid court order. The Committee believes that the court, and not the jury, should determine whether a court order is valid, so that the word “valid” has been omitted from instructions on this offense.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

8.11A Inference Of Unlawful Purpose In Child Abduction

If you find that the defendant lured or attempted to lure a child under 17 years of age into a [(motor vehicle) (building) (house trailer) (dwelling place)] and that he did so [(without the express consent of the child's parent or lawful custodian of the child) (with the intent to avoid the express consent of the child's parent or lawful custodian)], you may infer it was for other than a lawful purpose.

You are never required to make this inference. It is for the jury to determine whether the inference should be made. You should consider all of the evidence in determining whether to make this inference.

Committee Note

720 ILCS 5/10-5(b)(10) (West 2020), previously amended by P.A. 97-160, effective January 1, 2012, removed the mandatory presumption; this section, previously amended by P.A. 97-998, effective January 1, 2013, raised the age of the child from 16 to 17.

In *People v. Woodrum*, 223 Ill. 2d 286 (2006), 860 N.E.2d 259 (2006) the Illinois Supreme Court held Section 10-5(b)'s requirement that the luring into a building of a child without parental consent was prima facie evidence that defendant's intent was for "other than a lawful purpose" and resulted in an unconstitutional mandatory rebuttable presumption. In 2011, Section 10-5(b) was amended by stating that the presumption was permissive and not mandatory.

This instruction should be used *only* when the defendant is charged with child abduction under Section 10-5(b)(10).

8.12 Definition Of Putative Father—Child Abduction

The term “putative father” means a man who has a reasonable belief that he is the father of a child born of a woman who is not his wife.

Committee Note

720 ILCS 5/10-5(a)(4) (West 2020).

8.13 Definition Of Child—Child Abduction

The word “child” means a person who, at the time the alleged violation occurs, [(is under the age of 18) (has a severe or profound intellectual disability)].

Committee Note

720 ILCS 5/10-5(a)(1) (West 2020).

When applicable, give Instruction 11.65G, defining “severe or profound intellectual disability.”

Use applicable bracketed material.

8.14 Definition Of Detains—Child Abduction

The word “detains” means taking or retaining physical custody of a child, whether or not the child resists or objects.

Committee Note

720 ILCS 5/10-5(a)(2) (West 2020).

8.15 Definition Of Lawful Custodian—Child Abduction**Committee Note**

The Committee believes that application of the definition of the term “lawful custodian” involves questions of law to be determined by the court rather than the jury. When a case involves a subsection of the child abduction statute that uses the term “lawful custodian,” the court should determine who is the lawful custodian of the child under 720 ILCS 5/10-5(a)(3), and should insert in the appropriate blank the name of that person or persons in Instruction 8.16.

720 ILCS 5/10-5(a)(3) provides that the term “lawful custodian” means a person or persons granted legal custody or entitled to physical possession of a child pursuant to a court order. This statute further provides that if the parents of a child have never been married to each other, it is presumed that a mother has legal custody of the child unless a valid court order states otherwise, and that if an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should be considered a valid court order granting custody to the mother.

8.16 Issues In Child Abduction

To sustain the charge of child abduction, the State must prove the following propositions:

[1] *First Proposition:* That, at the time of the alleged violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant [(concealed [(child)]) (detained [(child)]) (removed [(child)]) from the jurisdiction of the court)]; and

Third Proposition: That when the defendant did so, there was a court order granting [(sole) (joint)] [(custody) (care) (possession)] of [(child)] to another; and

Fourth Proposition: That when he did so, the defendant intended to violate any terms of that court order.

[or]

[2] *First Proposition:* That, at the time of the alleged violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant [(concealed [(child)]) (detained [(child)]) (removed [(child)]) from the jurisdiction of the court)]; and

Third Proposition: That when the defendant did so, there was a court order that prohibited him from [(concealing [(child)]) (detaining [(child)]) (removing [(child)]) from the jurisdiction of the court)]; and

Fourth Proposition: That when he did so, the defendant intended to violate that order.

[or]

[3] *First Proposition:* That, at the time of the alleged violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant was [(child)]'s putative father; and

Third Proposition: That the defendant's paternity of [(child)] [(had not been legally established) (had been legally established in a court proceeding where no custody order had been entered)]; and

Fourth Proposition: That the defendant intentionally [(concealed) (detained) (removed)] [(child)] without the consent of [(mother) (lawful custodian)].

[or]

[3a] *First Proposition:* That, at the time of the alleged violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant was [(child)]'s mother; and

Third Proposition: That the defendant intentionally [(concealed) (removed)] [(child)] from [(unadjudicated father)] who provided sole ongoing care and custody of [(child)] in [(mother)]'s absence; and

Fourth Proposition: That defendant had previously [(abandoned) (relinquished custody of)] [(child)].

[or]

[4] *First Proposition:* That, at the time of the alleged violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant intentionally [(concealed) (removed)] [(child)] from [(parent)]; and

Third Proposition: That at the time the defendant did so, defendant had [(filed a petition) (been served with process)] in an action affecting [(marriage) (paternity)]; and

Fourth Proposition: That at the time the defendant did so, no temporary or final order determining custody had issued.

[or]

[5] *First Proposition:* That, at the time of the alleged violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant intentionally [(failed to return) (refused to return) (impeded the return of)] [(child)] to [(lawful custodian)] in Illinois; and

Third Proposition: That at the time the defendant did so, visitation rights outside the State of Illinois had expired.

[or]

[6] *First Proposition:* That, at the time of the alleged violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant is [(child)]'s parent; and

Third Proposition: That the defendant [(is) (was)] married to [(child)]'s other parent; and

Fourth Proposition: That the defendant knowingly concealed [(child)] for 15 days; and

Fifth Proposition: That at the time the defendant did so, there was no court order of custody; and

Sixth Proposition: That the defendant failed to make reasonable attempts within the 15-day period to notify [(child)]'s other parent as to [(child)]'s specific whereabouts, including [(notifying the other parent of a means by which to contact [(child)]) (arranging reasonable visitation with [(child)]) (arranging contact with [(child)])].

[or]

[7] *First Proposition:* That, at the time of the violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant is [(child)]'s parent; and

Third Proposition: That the defendant [(is) (was)] married to [(child)]'s other parent; and

Fourth Proposition: That the defendant knowingly [(concealed) (detained) (removed)] [(child)]; and

Fifth Proposition: That when the defendant did so, he [(used physical force) (threatened physical force)]; and

Sixth Proposition: That when the defendant did so, there was no court order of custody.

[or]

[8] *First Proposition:* That, at the time of the violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant knowingly [(concealed) (detained) (removed)] [(child)]; and

Third Proposition: That the defendant did so for [(payment) (promise of payment)]; and

Fourth Proposition: That the defendant did so at the instruction of a person who had no legal right to custody of [(child)].

[or]

[9] *First Proposition:* That, at the time of the violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That [(child)] had been removed from another State; and

Third Proposition: That the defendant knowingly retained [(child)] in the State of Illinois for 30 days; and

Fourth Proposition: That the defendant did so [(without the consent of the [(lawful custodian)]] (in violation of a court order of custody)].

[or]

[10] *First Proposition:* That [(child)] [(was under the age of 17 years) (was traveling to or from a primary or secondary school)]; and

Second Proposition: That the defendant intentionally [(lured) (attempted to lure)] [(child)] into a [(motor vehicle) (building) (house trailer) (dwelling place)]; and

Third Proposition: That the defendant did so without the consent of [(parent) (lawful custodian)]; and

Fourth Proposition: That the defendant did so for other than a lawful purpose.

[or]

[11] *First Proposition:* That, at the time of the violation, [(child)] was [(under the age of 18 years) (a person with a severe or profound intellectual disability)]; and

Second Proposition: That the defendant knowingly [(destroyed) (altered) (concealed) (disguised)] physical evidence) (furnished false information)]; and

Third Proposition: That the defendant did so with intent to [(obstruct) (prevent)] efforts to locate the child victim of a child abduction.

If you find from your consideration of all the evidence that each one of these

propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-5 (West 2020).

Give Instruction 8.11. See Committee Note regarding definitions.

The bracket numbers correspond to the numbered subsections in 720 ILCS 5/10-5(b). The offenses contained in Section 10-5(b)(3) have been split into brackets 3 and 3A.

If the defendant is charged with a violation of 720 ILCS 5/10-5(b)(10), give Instruction 8.11A. See Committee Note to Instruction 8.11A.

See Committee Note to Instruction 8.15.

Replace the word “(child)” with the name of the child or person with a severe or profound intellectual disability. Replace the words “(unadjudicated father),” “(parent),” or “(lawful custodian)” with the name of the child’s unadjudicated father, parent, or lawful custodian.

If an affirmative defense is warranted, give Instruction 8.17.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.17 Affirmative Defenses To Child Abduction

It is a defense to the charge of child abduction that

[1] at the time of the alleged violation, the defendant had custody of _____ pursuant to a court order granting legal custody or visitation rights.

[or]

[2] prior to the time of the alleged violation, the defendant had physical custody of _____ pursuant to a court order granting legal custody or visitation rights; that the defendant failed to return _____ as a result of circumstances beyond his control; and that the defendant [(notified and disclosed to the other parent or legal custodian the specific whereabouts of _____ and a means by which _____ could be contacted) (within 24 hours after the visitation period had expired, made a reasonable attempt to notify the other parent or lawful custodian of such circumstances and returned _____ as soon as possible)].

[or]

[3] the defendant was fleeing an incidence or pattern of domestic violence.

[or]

[4] the defendant [(lured) (attempted to lure)], _____ who was under the age of 17, into a [(motor vehicle) (building) (house trailer) (dwelling place)] for a lawful purpose.

Committee Note

720 ILCS 5/10-5(c) (West 2020).

Give Instruction 8.16.

Insert in the blanks the name of the child or person with a severe or profound intellectual disability.

When this instruction is given, add a proposition to Instruction 8.16.

See also 720 ILCS 5/3-2, and the Introduction to IPI Criminal Chapters 24–25.00.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.18 Definition Of Aiding And Abetting Child Abduction

A person commits the offense of aiding and abetting child abduction when, before or during the commission of a child abduction and with the intent to promote or facilitate the child abduction, he intentionally aids or abets another in the planning or commission of that offense, unless before the offense is committed, he makes proper effort to prevent its commission.

Committee Note

720 ILCS 5/10-7 (West 2020), as amended by P.A. 96-710, effective January 1, 2010.

Give Instructions 8.11 and 8.19.

8.19 Issues In Aiding And Abetting Child Abduction

To sustain the charge of aiding and abetting child abduction, the State must prove the following propositions:

First Proposition: That a child abduction was committed; and

Second Proposition: That before or during the commission of the child abduction, the defendant [(aided) (abetted)] another in the [(planning) (commission)] of that offense; and

Third Proposition: That when the defendant did so, he intended to [(promote) (facilitate)] commission of the offense of child abduction.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-7 (West 2020).

Give Instructions 8.18 and 8.11.

If an affirmative defense is applicable, see the Committee Note to Instruction 8.19A as to adding a fourth proposition to this instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

8.19A Aiding Or Abetting Child Abduction—Affirmative Defense

It is an affirmative defense to the charge of aiding and abetting child abduction if, before the child abduction, the person makes a proper effort to prevent the commission of the child abduction.

Committee Note

720 ILCS 5/10-7 (West 2020).

Give Instructions 8.18, 8.19, and 8.19B.

8.19B Issue In Defense Of Aiding Or Abetting Child Abduction

Fourth Proposition: That the defendant did not make a proper effort to prevent the child abduction before it was committed.

Committee Note

720 ILCS 5/10-7 (West 2020).

Give Instructions 8.18, 8.19, and 8.19A.

Give this issue as the final proposition in Instruction 8.19.

8.20 Definition Of Harboring A Runaway

A person commits the offense of harboring a runaway when he knowingly gives shelter to a minor for more than 48 hours without the knowledge and consent of the minor's parent or guardian, and without notifying local law enforcement authorities of the minor's name and the fact that the minor is being provided shelter.

Committee Note

720 ILCS 5/10-6 (West 2020).

Give Instruction 8.21.

By its terms, 720 ILCS 5/10-6 does not apply to agencies or associations providing crisis intervention services as defined in 705 ILCS 405/3-5 (Juvenile Court Act of 1987), or to operators of youth emergency shelters as defined in 225 ILCS 10/2.21 (Child Care Act of 1969). In addition, Section 10-6 does not apply to minors who have been emancipated under 750 ILCS 30/1 *et seq.* (Emancipation of Mature Minor's Act). Whenever the evidence in the case raises issues as to those exclusions, this instruction must be modified to indicate the exclusion, a definition of the excluded class of persons should be given, and an additional proposition requiring the jury to find that the defendant did not belong to the excluded class or that the minor was not emancipated at the time the shelter was given must be added to Instruction 8.21.

8.21 Issues In Harboring A Runaway

To sustain the charge of harboring a runaway, the State must prove the following propositions:

First Proposition: That the defendant knowingly gave shelter to _____ for more than 48 hours; and

Second Proposition: That when the defendant did so, _____ was a minor; and

Third Proposition: That the defendant did so without the knowledge of _____'s [(parent) (guardian)]; and

Fourth Proposition: That the defendant did so without the consent of _____'s [(parent) (guardian)]; and

Fifth Proposition: That the defendant did so without notifying local law enforcement authorities of _____'s name; and

Sixth Proposition: That the defendant did so without notifying local law enforcement authorities that he was providing shelter to _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-6 (West 2020).

Give Instruction 8.20.

Insert in the blank the name of the child to whom the defendant allegedly gave shelter.

Whenever the evidence in the case presents an issue as to whether the defendant falls within a category of persons excluded from criminal liability under 720 ILCS 5/10-6, or whether the minor was emancipated at the time of the offense, an additional proposition must be added to this instruction. See Committee Note to Instruction 8.20.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

8.22 Definition Of Unlawful Visitation Or Parenting Time Interference

A person commits the offense of unlawful visitation or parenting time interference when he, in violation of the [(visitation) (parenting time) (custody time)] provisions of a court order relating to child custody, [(detains) (conceals)] a child with the intent to deprive another person of his rights to [(visitation) (parenting time) (custody time)].

Committee Note

720 ILCS 5/10-5.5 (West 2020).

Give Instruction 8.23.

When applicable, give Instruction 8.13, defining “child.”

When applicable, give Instruction 8.14, defining “detains.”

720 ILCS 5/10-5(a)(3) provides that the term “lawful custodian” means a person granted legal custody or entitled to physical possession of a child pursuant to a court order. This statute further provides that if the parents of a child have never been married to each other, it is presumed that a mother has legal custody of the child unless a valid court order provides otherwise, and that if an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should be considered a valid court order granting custody to the mother.

The Committee believes that application of the above definition involves questions of law to be determined by the court rather than the jury. When a case involves the interference of the visitation, parenting time or custody time of a lawful custodian, the court should determine who the lawful custodian of the child is under 720 ICLS 5/10-5(3), and the name of that person should be inserted in the appropriate blank in Instruction 8.23.

The Illinois Supreme Court upheld the constitutionality of this statute in *People v. Warren*, 173 Ill. 2d 348, 671 N.E.2d 700 (1996). Only non-custodial parents can be aggrieved by visitation interference. *Id.*, 173 Ill. 2d at 365, 671 N.E.2d at 709. Persons with joint custody cannot commit the offense of visitation interference. *Id.*, 173 Ill. 2d at 364, 671 N.E.2d at 709.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

8.23 Issues In Unlawful Visitation Or Parenting Time Interference

To sustain the charge of unlawful visitation or parenting time interference, the State must prove the following propositions:

First Proposition: That there was a court order relating to [(child custody) (visitation) (parenting time) (custody time)] pertaining to [(child)]; and

Second Proposition: That the defendant [(detained) (concealed)] [(child)] with the intent to deprive _____ of his right to [(visitation) (parenting time) (custody time)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-5.5 (West 2020).

Give Instruction 8.22.

Give Instruction 8.13, defining “child.”

When applicable, give Instruction 8.14, defining “detains.”

Replace the word “child” with the name of the child or the person with a severe or profound intellectual disability.

In the second proposition, insert in the blank the name of the person whose rights were allegedly interfered with by the defendant.

720 ILCS 5/10-5(a)(3) provides that the term “lawful custodian” means a person granted legal custody or entitled to physical possession of a child pursuant to a court order. This statute further provides that if the parents of a child have never been married to each other, it is presumed that a mother has legal custody of the child unless a valid court order states otherwise, and that if an adjudication of paternity has been completed and the father has been assigned support obligations or visitation rights, such a paternity order should be considered a valid court order granting custody to the mother.

The Committee believes that application of the above definition involves questions of law to be determined by the court rather than the jury. When a case involves the interference of the visitation, parenting time or custody time of a lawful custodian, the court should determine who the lawful custodian of the child is under 720 ILCS 5/10-5(3), and the name of that person should be inserted in the appropriate blank in the Second Proposition.

The Illinois Supreme Court upheld the constitutionality of this statute in *People v. Warren*, 173 Ill.2d 348, 671 N.E.2d 700 (1996). Only non-custodial parents can be aggrieved by visitation interference. *Id.*, 173 Ill.2d at 365, 671 N.E.2d at 709.

Persons with joint custody cannot commit the offense of visitation interference. *Id.*, 173 Ill.2d at 364, 671 N.E.2d at 709.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the Second Proposition.

If an affirmative defense is raised, give Instructions 8.24 and 8.24A.

8.24 Affirmative Defenses To The Charge Of Unlawful Visitation Or Parenting Time Interference

It is an affirmative defense to the charge of unlawful visitation or parenting time interference that the defendant committed

[1] the act to protect _____ from imminent physical harm, provided that the defendant's belief that there was physical harm imminent was reasonable and that the defendant's conduct in withholding [(visitation rights) (parenting time) (custody time)] was a reasonable response to the harm believed to be imminent.

[or]

[2] the act was committed with the mutual consent of all parties having a right to custody and [(visitation of) (parenting time with)] _____.

[or]

[3] the act that was otherwise authorized by law.

Committee Note

720 ILCS 5/10-5.5(g) (West 2020).

Give Instructions 8.22 and 8.23.

Give this instruction and Instruction 8.24A when any of the affirmative defenses in 720 ILCS 5/10-5.5(g) are raised by the evidence.

Insert in the blanks the name of the child or the person with a severe or profound intellectual disability.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

8.24A Issues In Unlawful Visitation Or Parenting Time Interference

Third Proposition: That the defendant did not reasonably believe there was imminent physical harm against [(child)] and that the defendant's conduct in withholding [(visitation rights) (parenting time) (custody time)] was not reasonable.

[or]

Third Proposition: That the defendant did not act with the mutual consent of all parties having a right to custody and [(visitation of) (parenting time with)] [(child)].

[or]

Third Proposition: That the defendant's actions were not otherwise authorized by law.

Committee Note

720 ILCS 5/10-5.5(g) (West 2020).

8.25 Definition Of Luring A Minor

A person commits the offense of luring a minor when the defendant is [(21 years of age or older) (at least 18 years of age but under 21 years of age)] and knowingly [(contacts) (communicates electronically to)] the minor knowing the minor is under 15 years of age, after so communicating, commits any act in furtherance with the intent to [(persuade) (lure) (transport)] the minor away from his home or other location known by the minor’s parent or legal guardian to be the place where the minor is to be located for an unlawful purpose without the express consent of the minor’s [(parent) (legal guardian)], with the intent to avoid the express consent of the minor’s [(parent) (legal guardian)] and is a stranger to the [(parents) (legal guardian)].

Committee Note

720 ILCS 5/10-5.1 (West 2020).

Give Instruction 8.26.

8.26 Issues In Luring A Minor

To sustain the charge of luring a minor, the State must prove the following propositions:

First Proposition: That the defendant was [(21 years of age or older) (at least 18 years of age but under 21 years of age)]; and

Second Proposition: That the defendant knowingly [(contacted) (communicated electronically to)] [(minor)]; and

Third Proposition: That the defendant knew that [(minor)] was a minor under 15 years of age; and

Fourth Proposition: That the defendant intended, for an unlawful purpose [(and not for assisting [(minor)] in an emergency situation)], to [(persuade) (lure) (transport)] [(minor)] away from [(his home) (the location known by [(minor's parent) (minor's legal guardian)] to be the place where [(minor)] is located)]; and

Fifth Proposition: That the defendant did so without the express consent of [(minor's parent) (minor's legal guardian)] as to intentionally avoid such express consent; and

Sixth Proposition: That after communicating with [(minor)], the defendant committed any act in furtherance of this intent; and

Seventh Proposition: That the defendant is a stranger to [(minor's parents) (minor's legal guardian)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-5.1 (West 2020).

Give Instruction 8.25.

Replace the word “minor” with the name of the minor. Replace the words “minor’s parent,” “minor’s parents,” or “minor’s legal guardian” with the name of the minor’s parent, parents, or legal guardian.

Include applicable bracketed material in the Fourth Proposition (“and not for assisting [minor] in an emergency situation”) only when the evidence raises this defense. See Instruction 8.26A.

8.26A Defenses To Luring A Minor

It is a defense to the charge of luring a minor that:

[1] the defendant reasonably believed that the minor was over the age of 15.

[or]

[2] the defendant was assisting the minor in an emergency situation.

Committee Note

725 ILCS 5/10-5.1(f)(1) & 725 ILCS 5/10-5.1(f)(2) (West 2020)

Give this instruction when either defense is raised.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Under 725 ILCS 5/10-5.1(f)(2), it is an affirmative defense to a charge of luring a minor that the defendant was assisting the minor in an emergency situation. The State must prove beyond a reasonable doubt that the defendant acted with an unlawful purpose. If some evidence is presented that the defendant was assisting the minor in an emergency situation, give the bracketed material in the Fourth Proposition regarding an emergency situation.

8.27 Definition Of Involuntary Servitude

A person commits the offense of involuntary servitude when he knowingly [(subjects) (attempts to subject) (engages in a conspiracy to subject)] another person to [(labor) (services)] [(obtained) (maintained)] by one or more of the following means:

[1] [(causes) (threatens to cause)] physical harm to any person[(.) (; or)]

[2] [(physically restrains) (threatens to physically restrain)] another person[(.) (; or)]

[3] [(abuses) (threatens to abuse)] the [(law) (legal process)][(.) (; or)]

[4] knowingly [(destroys) (conceals) (removes) (confiscates) (possesses)] [(any actual or purported passport or other immigration document) (any other actual or purported government identification document)] of another person[(.) (; or)]

[5] [(intimidates) (exerts financial control over)] any person[(.) (; or)]

[6] uses any [(scheme) (plan) (pattern)] intending to cause the other person to believe that if the other person did not perform the [(labor) (services)], the other person or another person would suffer [(serious harm) (physical restraint)].

Committee Note

720 ILCS 5/10-9(b) (West 2020).

Give Instruction 8.28.

Use applicable bracketed material.

720 ILCS 5/10-9(b) indicates that a violation of this subsection may occur by commission of any one or more of the bracketed materials.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.28 Issues In Involuntary Servitude

To sustain the charge of involuntary servitude, the State must prove the following proposition(s):

First Proposition: That the defendant knowingly [(subjected) (attempted to subject) (engaged in a conspiracy to subject)] another person to [(labor) (services)]; and

Second Proposition: That the defendant [(obtained) (maintained)] [(labor) (services)] by:

[1] [(causing) (threatening to cause)] physical harm to any person[(.) (; or)]

[2] [(physically restraining) (threatening to physically restrain)] another person[(.) (; or)]

[3] [(abusing) (threatening to abuse)] [(the law) (legal process)][(.) (; or)]

[4] knowingly [(destroying) (concealing) (removing) (confiscating) (possessing)] [(any actual or purported passport or other immigration document) (any other actual or purported government identification document)] of another person[(.) (; or)]

[5] [(intimidating) (exerting financial control over)] any person[(.) (; or)]

[6] using any [(scheme) (plan) (pattern)] intending to cause the other person to believe that if the other person did not perform the [(labor) (services)] [(the other person) (another person)] would suffer [(serious harm) (physical restraint)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-9(b) (West 2020).

Give Instruction 8.27.

720 ILCS 5/10-9(b) indicates that a violation of this subsection may occur by commission of any one or more of the bracketed materials. If a jury is asked to consider multiple theories of criminal liability under 720 ILCS 5/10-9(b), separate additional propositions should be given to the jury for each theory. For example, if violations of Section 10-9(b)(1) and (3) are presented to the jury, the following should be given:

Second Proposition: That the defendant [(obtained) (maintained)] [(labor) (services)] by

[1] [(causing) (threatening to cause)] physical harm to any person; or

Third Proposition: That the defendant [(obtained) (maintained)] [(labor) (services)] by

[3] [(abusing) (threatening to abuse)] [(the law) (legal process)].

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

A defendant may be sentenced to an extended term sentence under 730 ILCS 5/5-8-2 if the victim suffers bodily injury. The Committee believes this raises issues of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), for which the jury would need to be instructed and an extended term sentence could be imposed. See IPI Criminal Instructions 28.00 *et seq.*

8.29 Definition Of Involuntary Sexual Servitude Of A Minor

A person commits the offense of involuntary sexual servitude of a minor when he knowingly

[(recruits) (entices) (harbors) (transports) (provides) (obtains by any means)] [or] [attempts to (recruit) (entice) (harbor) (provide) (obtain by any means)] a person under 18 years of age, knowing that the minor will engage in [(commercial sexual activity) (a sexually-explicit performance) (the production of pornography)];

[or]

[(causes) (attempts to cause)] a minor to engage in [(commercial sexual activity) (a sexually-explicit performance) (the production of pornography)];

and

there is no overt [(force) (threat)] and the minor is between 17 and 18 years of age.

[or]

there is no overt [(force) (threat)] and the minor is under 17 years of age.

[or]

there is overt [(force) (threat)].

Committee Note

720 ILCS 5/10-9(c) (West 2020).

Give Instruction 8.30.

Use applicable bracketed material.

Kidnapping

8.30 Issues In Involuntary Sexual Servitude Of A Minor

To sustain the charge of involuntary sexual servitude of a minor, the State must prove the following propositions:

First Proposition: That the defendant [(recruited) (enticed) (harbored) (transported) (provided) (obtained by any means)] [or] [attempted to (recruit) (entice) (harbor) (provide) (obtain by any means)] a person under 18 years of age, knowing that the minor will engage in [(commercial sexual activity) (a sexually-explicit performance) (the production of pornography)]; and

[or]

First Proposition: That the defendant [(caused) (attempted to cause)] _____ to engage in [(commercial sexual activity) (a sexually-explicit performance) (the production of pornography)]; and

Second Proposition: That there was no overt [(force) (threat)] and _____ was between the ages of 17 and 18 years.

[or]

Second Proposition: That there was no overt [(force) (threat)] and _____ was under the age of 17.

[or]

Second Proposition: That there was overt [(force) (threat)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-9(c) (West 2020).

Give Instruction 8.29.

Use applicable bracketed material.

Insert in the blanks the name of the minor.

A defendant may be sentenced to an extended term sentence under 730 ILCS 5/5-8-2 if the victim suffers bodily injury. The Committee believes this raises issues of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), for which the jury would need to be instructed and an extended term sentence could be imposed. See IPI Criminal Instructions 28.00 *et seq.*

8.31 Definition Of Trafficking In Persons (Individual)

A person commits the offense of trafficking in persons when he knowingly

[1] [(recruits) (entices) (harbors) (transports) (provides) (obtains by any means)] [or] [attempts to (recruit) (entice) (harbor) (transport) (provide) (obtain by any means)] another person, [(intending) (knowing)] that the other person will be subjected to involuntary servitude.

[or]

[2] benefits [(financially) (by receiving anything of value)] from participation in a venture that has engaged in [(an act of involuntary servitude) (involuntary sexual servitude of a minor)].

Committee Note

720 ILCS 5/10-9(d) (West 2020).

See 720 ILCS 5/10-9(b).

Give Instruction 8.32.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.31A Definition Of Trafficking In Persons (Company)

A company commits the offense of trafficking in persons when it knowingly benefits [(financially) (by receiving anything of value)] from participation in a venture that has engaged in [(an act of involuntary servitude) (involuntary sexual servitude of a minor)].

Committee Note

720 ILCS 5/10-9(d) (West 2020).

See 720 ILCS 5/10-9(b).

Give Instruction 8.32A.

Use applicable bracketed material.

8.31B Definition Of Company

The word “company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations, that exist for the purpose of making profit.

Committee Note

720 ILCS 5/10-9(a)(2.5) (West 2020).

Give this instruction when Instruction 8.31A is used.

Kidnapping

8.32 Issues In Trafficking In Persons (Individual)

To sustain the charge of trafficking in persons, the State must prove the following proposition:

[1] That the defendant knowingly [(recruited) (enticed) (harbored) (transported) (provided) (obtained by any means)] [or] [attempted to (recruit) (entice) (harbor) (transport) (provide) (obtain by any means)] another person, [(intending) (knowing)] that the other person would be subjected to involuntary servitude.

[or]

[2] That the defendant knowingly benefitted [(financially) (by receiving anything of value)] from participation in a venture that has engaged in [(an act of involuntary servitude) (involuntary sexual servitude of a minor)].

If you find from your consideration of all the evidence that the proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-9(d) (West 2020).

Give Instruction 8.31.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

A defendant may be sentenced to an extended term sentence under 730 ILCS 5/5-8-2 if the victim suffers bodily injury. The Committee believes this raises issues of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), for which the jury would need to be instructed and an extended term sentence could be imposed. See IPI Criminal Instructions 28.00 *et seq.*

8.32A Issues In Trafficking In Persons (Company)

To sustain the charge of trafficking in persons, the State must prove the following proposition:

That the defendant knowingly benefitted [(financially) (by receiving anything of value)] from participation in a venture that has engaged in [(an act of involuntary servitude) (involuntary sexual servitude of a minor)].

If you find from your consideration of all the evidence that the proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-9(d) (West 2020).

Give Instruction 8.31A.

Use applicable bracketed material.

A defendant may be sentenced to an extended term sentence under 730 ILCS 5/5-8-2 if the victim suffers bodily injury. The Committee believes this raises issues of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), for which the jury would need to be instructed and an extended term sentence could be imposed. See IPI Criminal Instructions 28.00 *et seq.*

8.33 Definition Of Failure To Report The Death Or Disappearance Of A Child Under 13 Years of Age

[1] A [(parent) (legal guardian) (caretaker)] of a child under 13 years of age commits failure to report the [(death) (disappearance)] of a child under 13 years of age when he [(knows) (should know)] the child is [(missing) (deceased)] and fails to report this information to a law enforcement agency within 24 hours.

[or]

[2] A [(parent) (legal guardian) (caretaker)] of a child under 2 years of age commits failure to report the [(death) (disappearance)] of a child under 13 years of age when he [(knows) (should know)] the child is [(missing) (deceased)] and fails to report this information to a law enforcement agency within 1 hour.

[or]

[3] A [(parent) (legal guardian) (caretaker)] of a child under 13 years of age commits failure to report the death of a child under 13 years of age when he reasonably believes the child's death was caused by [(homicide) (accident) (suspicious circumstances)] and fails to report this information to the law enforcement agency for the county where the child's corpse was found.

Committee Note

720 ILCS 5/10-10 (West 2020).

Give Instruction 8.34.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

8.34 Issues In Failure To Report The Death Or Disappearance Of A Child Under 13 Years Of Age

To sustain the charge of failure to report the death or disappearance of a child under 13 years of age, the State must prove the following propositions:

First Proposition: That the defendant was the [(parent) (legal guardian) (caretaker)] of _____ who was a child under 13 years of age; and

Second Proposition: That the defendant [(knew) (should have known)] _____ was [(missing) (deceased)] and failed to report the [(death) (disappearance)] to a law enforcement agency within 24 hours.

[or]

First Proposition: That the defendant was the [(parent) (legal guardian) (caretaker)] of _____ who was a child under 2 years of age; and

Second Proposition: That the defendant [(knew) (should have known)] _____ was [(missing) (deceased)] and failed to report the [(death) (disappearance)] to a law enforcement agency within 1 hour.

[or]

First Proposition: That the defendant was the [(parent) (legal guardian) (caretaker)] of _____ who was a child under 13 years of age; and

Second Proposition: That the defendant reasonably believed _____'s death was caused by [(homicide) (accident) (suspicious circumstances)] and failed to report this information to the law enforcement agency for the county where _____'s corpse was found.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/10-10 (West 2020).

Give Instruction 8.33.

Use applicable propositions and bracketed material.

Insert in the blanks the name of the child or the person with a severe or profound intellectual disability.

8.34A Defenses To Failure To Report The Death Or Disappearance Of A Child Under 13 Years Of Age

A [(parent) (legal guardian) (caretaker)] does not commit the offense of failure to report the death or disappearance of a child under 13 years of age when:

[1] the failure to report is due to an [(act of God) (act of war) (inability of a law enforcement agency to receive a report of the disappearance of a child)].

[or]

[2] he calls 911 to report the disappearance of the child.

[or]

[3] he knows that the child is under the care of another [(parent) (family member) (relative) (friend) (babysitter)].

[or]

[4] he is [(hospitalized) (in a coma) (otherwise seriously physically or mentally impaired)] as to prevent the him from reporting the [(death) (disappearance)].

Committee Note

720 ILCS 5/10-10(d) (West 2020).

Give Instructions 8.33 and 8.34.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Chapter 9.00

SEX OFFENSES

SYNOPSIS

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9.01 Definition Of Indecent Solicitation Of A Child

[1] A person of the age of 17 years or older commits the offense of indecent solicitation of a child when, with the intent that the offense of [(aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed, he knowingly solicits [(a child under the age of 17 years) (one whom he believes to be a child under the age of 17 years)] to perform an act of sexual [(penetration) (conduct)].

[or]

[2] A person of the age of 17 years or older commits the offense of indecent solicitation of a child when, with the intent that the offense of [(aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed, he knowingly discusses an act of sexual [(conduct) (penetration)] with [(a child under the age of 17 years)] by means of the Internet.

[It is not a defense to this offense that the person did not solicit the child to perform an act of sexual [(conduct) (penetration)] with the person.]

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill. Rev. Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

This Instruction has been revised to conform with the rewriting and amendment of 720 ILCS 5/11-6 (West 1999), as acknowledged by the Illinois Appellate Court in *People v. Carter*, 405 Ill. App. 3d 246, 939 N.E.2d 46 (1st Dist. 2010). Public Act 91-226, section 5, effective July 22, 1999, rewrote Section 11-6 by adding the elements of intent and knowledge, changing the age range of potential victims to children under the age of 17, and deleting the provision that it was not a defense that the accused reasonably believed the child to be of the age of 13 years and upwards. Public Act 95-143, section 5, effective January 1, 2008, added subsections concerning a person knowingly discussing an act of sexual conduct or sexual penetration with a child by means of the Internet.

Give Instruction 9.02.

When applicable, give Instruction 11.57 defining “aggravated criminal sexual assault.”

When applicable, give Instruction 11.55 defining “criminal sexual assault.”

When applicable, give Instruction 11.103 defining “predatory criminal sexual assault of a child.”

When applicable, give Instruction 11.61 defining “aggravated criminal sexual abuse.”

When applicable, give Instruction 9.01C defining “solicit.”

When applicable, give Instruction 11.65E defining “sexual penetration.”

When applicable, give Instruction 11.65D defining “sexual conduct.”

When applicable, give Instruction 4.27 defining “access.”

When applicable, give Instruction 4.32 defining “computer.”

When applicable, give Instruction 4.38 defining “Internet.”

When applicable, give Instruction 4.48 defining “online.”

When applicable, give Instruction 4.69 defining “wireless device.”

The offense option of criminal sexual assault cannot be used with alternative [2].
See 720 ILCS 5/11-6(a-5) (West 2013).

It is also not a defense to Section 11-6(a-5) that the person did not solicit the child to perform sexual conduct or sexual penetration with the person. *See* 720 ILCS 5/11-6(a-6) (West 2013). When this issue is raised and the person is charged under Section 11-6(a-5), the committee suggests giving the last-bracketed sentence with alternative [2].

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.01A Definition Of Solicit Or Solicitation

The words “solicit” or “solicitation” mean to command, authorize, urge, incite, request, or advise another to commit an offense.

Committee Note

Amended Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/2-20 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 2-20 (1991)).

When a defendant is charged with indecent solicitation of a child, do not use this definition. Under those circumstances, give Instruction 9.01C. *See* 720 ILCS 5/11-6(b) (West 2013).

9.01B Belief Of Age No Defense To Indecent Solicitation Of A Child

It is not a defense to the charge of indecent solicitation of a child that the defendant reasonably believed the child to be of the age of 13 years or older.

Committee Note

Amended Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-6(b) (1991)).

This Committee Note has been edited to conform with the rewriting and amendment of 720 ILCS 5/11-6 (West 1999), as acknowledged by the Illinois Appellate Court in *People v. Carter*, 405 Ill. App. 3d 246, 939 N.E.2d 46 (1st Dist. 2010).

Public Act 91-226, section 5, effective July 22, 1999, rewrote Section 11-6 by adding the elements of intent and knowledge, changing the age range of potential victims to children under the age of 17, and deleting the provision that it was not a defense that the accused reasonably believed the child to be of the age of 13 years and upwards. Consequently, Instruction 9.01B, concerning the accused's belief about the child's age being 13 years and upwards, should only be used for offenses committed before July 22, 1999.

9.01C Definition of Solicit

The word “solicit” means to command, authorize, urge, incite, request, or advise another to perform an act by any means, including, but not limited to, in person, over the phone, in writing, by computer, or by advertisement of any kind.

Committee Note

Amended Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill. Rev. Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

This definition is to be used when a defendant is charged with indecent solicitation of a child. Do not use the definition of solicit found in Instruction 9.01A.

9.02 Issues In Indecent Solicitation Of A Child

To sustain the charge of indecent solicitation of a child, the State must prove the following propositions:

[1] *First Proposition*: That the defendant knowingly solicited [(a child under the age of 17 years) (one whom the defendant believed to be a child under the age of 17 years)] to perform an act of sexual [(penetration) (conduct)]; and

Second Proposition: That when the defendant did so, he intended that the offense of [(aggravated criminal sexual assault) (criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed; and

Third Proposition: That the defendant was then 17 years of age or older.

[or]

[2] *First Proposition*: That the defendant knowingly discussed an act of sexual [(penetration) (conduct)] with [(a child under the age of 17 years) (one whom the defendant believed to be a child under the age of 17 years)] by means of the Internet; and

Second Proposition: That when the defendant did so, he intended that the offense of [(aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (aggravated criminal sexual abuse)] be committed; and

Third Proposition: That the defendant was then 17 years of age or older.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill. Rev. Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

This Instruction has been revised to conform with the rewriting and amendment of 720 ILCS 5/11-6 (West 1999), as acknowledged by the Illinois Appellate Court in *People v. Carter*, 405 Ill. App. 3d 246, 939 N.E.2d 46 (1st Dist. 2010).

Give Instruction 9.01.

When applicable, give Instruction 11.57 defining “aggravated criminal sexual assault.”

When applicable, give Instruction 11.55 defining “criminal sexual assault.”

When applicable, give Instruction 11.103 defining “predatory criminal sexual assault of a child.”

When applicable, give Instruction 11.61 defining “aggravated criminal sexual abuse.”

When applicable, give Instruction 9.01C defining “solicit.”

When applicable, give Instruction 11.65E defining “sexual penetration.”

When applicable, give Instruction 11.65D defining “sexual conduct.”

When applicable, give Instruction 4.27 defining “access.”

When applicable, give Instruction 4.32 defining “computer.”

When applicable, give Instruction 4.38 defining “Internet.”

When applicable, give Instruction 4.48 defining “online.”

When applicable, give Instruction 4.69 defining “wireless device.”

The offense option of criminal sexual assault cannot be used in the Second Proposition of alternative [2]. *See* 720 ILCS 5/11-6(a-5) (West 2013).

It is also not a defense to Section 11-6(a-5) that the defendant did not solicit the child to perform sexual conduct or sexual penetration with the defendant. *See* 720 ILCS 5/11-6(a-6) (West 2013). When this issue is raised and the defendant is charged under Section 11-6(a-5), the committee suggests giving the last-bracketed sentence included in alternative [2] of Instruction 9.01.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” is inserted after the word “defendant” in each proposition. Give Instruction 5.03. However, some statutes appear to require that particular conduct be committed by the defendant personally or that is an element of the offense pertain to the defendant himself. Whenever accountability language is to be inserted in an issues instruction, caution should be exercised to assure that accountability language is not used in any proposition that involves such conduct or status. *See* Committee Note to Instruction 5.03. Do not insert accountability language in the Third Proposition of this instruction. *See People v. Griffin*, 247 Ill. App. 3d 1, 616 N.E.2d 1242 (1st Dist. 1993) (holding that accountability language should not have been inserted into Instruction 11.58B, the aggravated criminal sexual issues instruction, where of the age of the person who actually penetrated the victim defines whether that crime ever occurred).

9.02A Consent Of Child No Defense To Indecent Solicitation Of A Child

Consent of the child is not a defense to the charge of indecent solicitation of a child.

Committee Note

Instruction and Committee Note Approved January 18, 2013.

720 ILCS 5/11-6 (West 2013) (formerly Ill. Rev. Stat. ch. 38, § 11-6 (1991)), amended by P.A. 91-226, § 5, effective July 22, 1999; P.A. 95-143, § 5, effective January 1, 2008; P.A. 96-1551, Art. 2, § 5, effective July 1, 2011.

Give this Instruction with Instruction 9.01 only when the issue of consent is raised by the evidence. See Introduction to Chapter 24–25.00.

See Instruction 11.63A.

9.03 Definition Of Public Indecency

A person of the age of 17 years or older commits the offense of public indecency when, in a place where the conduct may reasonably be expected to be viewed by others, he performs [(an act of sexual penetration) (an act of sexual conduct) (a lewd exposure of the body done with the intent to arouse or to satisfy the sexual desire of the person)].

[Breast-feeding of an infant is not an act of public indecency.]

Committee Note

720 ILCS 5/11-9 (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 11-9 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 89-59, effective January 1, 1996.

Give Instruction 9.04.

Give Instruction 11.65E when it is alleged that an act of sexual penetration is the indecent act. Give Instruction 11.65D when it is alleged that an act of sexual conduct is the indecent act.

P.A. 89-59, effective January 1, 1996, provides that breast-feeding of infants is not an act of public indecency. Accordingly, the Committee has provided the bracketed alternative in case such an issue arises.

Use applicable bracketed material.

9.04 Issues In Public Indecency

To sustain the charge of public indecency, the State must prove the following propositions:

First Proposition: That the defendant performed [(an act of sexual penetration) (an act of sexual conduct) (a lewd exposure of the body done with the intent to arouse or satisfy the sexual desire of the person)]; and

Second Proposition: That the defendant performed the [(act) (lewd exposure)] in a place where his conduct might reasonably be expected to be viewed by others; and

Third Proposition: That the defendant was then 17 years of age or older.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-9 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-9 (1991)).

Give Instruction 9.03.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.05 Definition Of Bigamy

A person commits the offense of bigamy when [(he) (she)], having a [(husband) (wife)], marries another [and thereafter cohabits in this state].

Committee Note

720 ILCS 5/11-12(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-12(a) (1991)).

Give the last clause only when the second marriage takes place outside Illinois and give Instruction 9.05A.

Use applicable bracketed material.

9.05A Definition Of Cohabit

The word “cohabit” means the living together of a man and woman in the same manner as if they were married to one another.

Committee Note

See Searls v. People, 13 Ill. 597, 598 (1852) (“In order to constitute this crime [adultery], the parties must dwell together openly and notoriously, upon terms as if the conjugal relation existed between them.”). This definition is applicable to offenses other than adultery, such as bigamy.

9.05B Affirmative Defenses To Bigamy

It is a defense to a charge of bigamy that, at the time of the marriage charged in the [(indictment) (information)],

[1] the defendant's prior marriage was dissolved or declared invalid by court judgment.

[or]

[2] the defendant reasonably believed [(his) (her)] prior [(husband) (wife)] to be dead.

[or]

[3] the prior [(husband) (wife)] had been continually absent for a period of five years, during which time the defendant did not know the prior [(husband) (wife)] to be alive.

[or]

[4] the defendant reasonably believed that [(he) (she)] was legally eligible to remarry.

Committee Note

720 ILCS 5/11-12(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-12(b) (1991)).

Give this instruction only when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

The word "judgment," as used in paragraph [1], is defined in Supreme Court Rule 2(b)(2).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

9.06 Issues In Bigamy

To sustain the charge of bigamy, the State must prove the following propositions:

First Proposition: That the defendant married _____ [and thereafter cohabited with [(him) (her)] in this State]; and

Second Proposition: That at the time of [(his) (her)] marriage to _____, the defendant was married to _____;

and

Third Proposition: That the defendant's prior marriage was not dissolved or declared invalid by court judgment.

[or]

Third Proposition: That the defendant did not reasonably believe that [(his) (her)] prior [(husband) (wife)] was dead.

[or]

Third Proposition: That the defendant's prior [(husband) (wife)] had not been continually absent for a period of 5 years during which time the defendant did not know the prior [(husband) (wife)] to be alive.

[or]

Third Proposition: That the defendant did not reasonably believe that [(he) (she)] was legally eligible to remarry.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of the propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-12 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-12 (1991)).

Give Instruction 9.05.

The Third Proposition presents alternative defenses. Give one or more of these alternatives when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00. If more than one is used they should be stated in the conjunctive because the State must overcome every defense.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.07 Definition Of Marrying A Bigamist

A person commits the offense of marrying a bigamist when [(he) (she)] knowingly marries another known to [(him) (her)] to be married [and thereafter cohabits in this State].

Committee Note

720 ILCS 5/11-13 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-13 (1991)).

Give Instruction 9.08.

Give the last clause only when the second marriage took place outside Illinois.

Use applicable bracketed material.

9.07A Affirmative Defenses To Marrying A Bigamist

It is a defense to the charge of marrying a bigamist that at the time of the marriage [1] the prior marriage of the other person was dissolved or declared invalid by court judgment.

[or]

[2] the defendant reasonably believed the prior [(husband) (wife)] of the other person to be dead.

[or]

[3] the other person's prior [(husband) (wife)] had been continually absent for a period of five years, during which time the defendant did not know that the other person's prior [(husband) (wife)] was alive.

[or]

[4] the defendant reasonably believed that the other person was legally eligible to remarry.

Committee Note

720 ILCS 5/11-12 and 11-13 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 11-12 and 11-13 (1991)).

Give this instruction only when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24–25.00.

The word “judgment,” as used in paragraph [1], is defined in Supreme Court Rule 2(b)(2).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

9.08 Issues In Marrying A Bigamist

To sustain the charge of marrying a bigamist, the State must prove the following propositions:

First Proposition: That the defendant married _____ [and thereafter cohabited with [(him) (her)]] in this State]; and

Second Proposition: That defendant then knew that _____ was then married to another person[]; and

Third Proposition: That _____'s prior marriage was not dissolved or declared invalid by court judgment

[or]

Third Proposition: That the defendant did not reasonably believe that _____'s prior [(husband) (wife)] was dead

[or]

Third Proposition: That _____'s prior [(husband) (wife)] had not been continually absent for a period of five years, during which time the defendant did not know [(he) (she)] was alive

[or]

Third Proposition: That the defendant did not reasonably believe that _____ was legally eligible to remarry].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-12(b) and 11-13 (West 1999) (formerly Ill. Rev. Stat. ch. 38, §§ 11-12(b) and 11-13 (1991)).

Give Instruction 9.07.

See Instruction 9.07A.

The Third Proposition presents alternative defenses. Give one or more of these alternatives if the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00. If more than one alternative is used they should be stated in the conjunctive because the State must overcome every defense.

Use applicable paragraphs and bracketed material.

9.09 Definition Of Prostitution

A person commits the offense of prostitution when [(he) (she)] [(intentionally) (knowingly)] [(performs) (offers to perform) (agrees to perform)] [(any act of sexual penetration) (any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

Committee Note

720 ILCS 5/11-14 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.10.

When sexual penetration is an issue, give Instruction 11.65E.

Because Section 11-14 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In *People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982), the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's "recklessly" committing prostitution under Section 11-14, the Committee has provided only the alternative mental states of "intentionally" and "knowingly." Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

This instruction has been revised to conform to the interpretation placed upon the prostitution statute by the Appellate Court in *People v. Pettigrew*, 215 Ill. App. 3d 393, 395, 158 Ill. Dec. 889, 890-91, 574 N.E.2d 1282, 1283-84 (4th Dist. 1991). In *Pettigrew*, the court found that a "purpose of sexual arousal or gratification" is an element of the offense only when an offer, agreement, or act of *touching or fondling* is alleged. The court held that proof of a "purpose of sexual arousal or gratification" is not required where an offer, agreement, or act of *sexual penetration* is alleged.

Use applicable bracketed material.

9.10 Issue In Prostitution

To sustain the charge of prostitution, the State must prove the following proposition:

That the defendant [(intentionally) (knowingly)] [(performed) (offered to perform) (agreed to perform)] [(any act of sexual penetration) (any touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-14 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.09.

When sexual penetration is an issue, give Instruction 11.65E.

Because Section 11-14 does not include a mental state, the Committee decided to provide two alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

In *People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982), the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state. Consistent with these cases and the Committee's view that it would be inappropriate to speak of a defendant's "recklessly" committing prostitution under Section 11-14, the Committee has provided only the alternative mental states of "intentionally" and "knowingly." Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

This instruction has been revised to conform to the interpretation placed upon the prostitution statute by the Appellate Court in *People v. Pettigrew*, 215 Ill. App. 3d 393, 158 Ill. Dec. 889, 574 N.E.2d 1282 (4th Dist. 1991). See Committee Note to Instruction 9.09.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in the proposition. See Instruction 5.03.

9.11 Definition Of Soliciting For A Prostitute

A person commits the offense of soliciting for a prostitute when he [(solicits another) (arranges or offers to arrange a meeting of persons) (directs another to a place knowing such direction is)] for the purpose of prostitution.

Committee Note

720 ILCS 5/11-15 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-15 (1991)).

Give Instruction 9.12.

When sexual penetration is an issue, give Instruction 11.65E.

Give Instruction 9.01A, defining the word “solicit.” Give Instruction 9.09, defining the word “prostitution.”

Use applicable bracketed material.

9.12 Issue In Soliciting For A Prostitute

To sustain the charge of solicitation for a prostitute, the State must prove the following proposition:

That the defendant solicited _____ for the purpose of prostitution.

[or]

That the defendant arranged or offered to arrange a meeting of persons for the purpose of prostitution.

[or]

That the defendant directed _____ to a place knowing such direction was for the purpose of prostitution.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-15 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-15 (1991)).

Give Instruction 9.11.

Use applicable paragraphs.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.13 Definition Of Soliciting For A Juvenile Prostitute [Or Institutionalized Mentally Retarded Person]

A person commits the offense of soliciting for a juvenile prostitute when he [(solicits another) (arranges or offers to arrange a meeting of persons) (directs another to a place knowing such direction is)] for the purpose of prostitution, and the prostitute for whom such person is soliciting is [(under 16 years of age) (an institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/11-15.1(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-15.1(a) (1991)).

Give Instruction 9.14.

The element concerning the mental disability of the victim was added by P.A. 85-1392, and that portion of the Instruction should only be used for offenses committed after the effective date of that Act. The term “institutionalized mentally retarded person” is defined in Instruction 11.65G.

Give Instruction 9.01A, defining the word “solicit.” Give Instruction 9.09, defining the word “prostitution.”

When sexual penetration is an issue, give Instruction 11.65E.

Use applicable bracketed material.

9.13A Affirmative Defense To Soliciting For A Juvenile Prostitute [Or Institutionalized Mentally Retarded Person]

It is a defense to the charge of soliciting for a juvenile prostitute that, at the time of the act giving rise to the charge, the defendant reasonably believed the person involved was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/11-15.1(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-15.1(b) (1991)).

The portion of the Instruction concerning the mental disability of the victim was added by P.A. 85-1392 and should not be used for an offense committed before the effective date of that Act.

See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Use applicable bracketed material.

9.14 Issues In Soliciting For A Juvenile Prostitute

To sustain the charge of soliciting for a juvenile prostitute, the State must prove the following propositions:

First Proposition: That the defendant solicited _____ for the purpose of prostitution;

[or]

First Proposition: That the defendant arranged or offered to arrange a meeting of persons for the purpose of prostitution;

[or]

First Proposition: That the defendant directed _____ to a place knowing such direction was for the purpose of prostitution;

and

Second Proposition: That _____, for whom the defendant was soliciting, was [(under the age of 16 years of age) (an institutionalized severely or profoundly mentally retarded person)] at the time of the act giving rise to the charge[; and

Third Proposition: That the defendant did not reasonably believe that _____ was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-15.1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-15.1 (1991)).

Give Instruction 9.13.

Give the Third Proposition when the issue is raised by the evidence. When there is sufficient evidence to raise the issue, the burden is on the State to overcome the defense beyond a reasonable doubt. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

The element concerning the mental disability of the alleged prostitute was added by P.A. 85-1392, and that portion of the Instruction should only be used for offenses committed after the effective date of that Act.

Insert in the blanks the name of the alleged prostitute.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose

conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.15 Definition Of Pandering

A person commits the offense of pandering when he, for any money, property, token, object, or article or anything of value [(compels a person to become a prostitute) (arranges or offers to arrange a situation in which a person may practice prostitution)].

Committee Note

720 ILCS 5/11-16 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-16 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.16.

Give Instruction 9.09, defining the word “prostitution,” and Instruction 9.21, defining the word “prostitute,” as applicable.

Use applicable bracketed material.

9.16 Issues In Pandering

To sustain the charge of pandering, the State must prove the following propositions:

First Proposition: That the defendant compelled _____ to become a prostitute;

[or]

First Proposition: That the defendant arranged or offered to arrange a situation in which _____ might practice prostitution;

and

Second Proposition: That the defendant acted for the purpose of obtaining any money, property, token, object, or article or anything of value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-16 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-16); amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.15.

To obtain a conviction under Section 11-16, the State need not prove an actual exchange of money. See Committee Comments to Section 11-16; *People v. Houston*, 43 Ill. App. 3d 677, 2 Ill. Dec. 207, 357 N.E.2d 184 (1st Dist. 1976). Compare Section 11-19 with Instructions § 9.23 and § 9.24.

Insert in the blanks the name of the alleged prostitute.

Use applicable paragraphs.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.17 Definition Of Keeping A Place Of Prostitution

A person commits the offense of keeping a place of prostitution when he has or exercises control over the use of any place which could offer seclusion or shelter for the practice of prostitution, if he

[1] knowingly [(grants) (permits)] the use of such place for the purpose of prostitution,

[or]

[2] [(grants) (permits)] the use of such place under circumstances from which he could reasonably know that the place is used or is to be used for purposes of prostitution.

[or]

[3] permits the continued use of a place after becoming aware of facts or circumstances from which he should reasonably know that the place is being used for purposes of prostitution.

Committee Note

720 ILCS 5/11-17 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-17 (1991)).

Give Instruction 9.18.

Give Instruction 9.09, defining the word “prostitution.”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

9.18 Issues In Keeping A Place Of Prostitution

To sustain the charge of keeping a place of prostitution, the State must prove the following propositions:

First Proposition: That the defendant [(had) (exercised control over)] the use of a place which could offer seclusion or shelter for the practice of prostitution; and

Second Proposition: That the place was used for the purposes of prostitution; and

Third Proposition: That the defendant knowingly [(granted) (permitted)] the use of such place for the purposes of prostitution.

[or]

Third Proposition: That the defendant [(granted) (permitted)] the use of the place under circumstances from which he could reasonably have known that the place was used or to be used for prostitution.

[or]

Third Proposition: That the defendant [(granted) (permitted)] the continued use of the place after he became aware of facts or circumstances from which he should have reasonably known that the place was being used for purposes of prostitution.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-17 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-17 (1991)).

Give Instruction 9.17.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.19 Definition Of Patronizing A Prostitute

A person commits the offense of patronizing a prostitute when [(he) (she)] with a person not [(his) (her)] spouse [(engages in an act of sexual penetration with a prostitute) (enters or remains in a place of prostitution with intent to engage in an act of sexual penetration)].

Committee Note

720 ILCS 5/11-18 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-18 (1991)).

Give Instruction 9.20.

Give Instruction 11.65E, defining the term “sexual penetration.”

If the issue is whether the accused has engaged in an act of sexual penetration with a prostitute, give the definition of the word “prostitute” found in Instruction 9.21.

If the issue is whether the accused entered or remained in a place of prostitution with the intent to engage in an act of sexual penetration, give Instruction 9.22, defining the term “place of prostitution.”

Use applicable bracketed material.

9.20 Issue In Patronizing A Prostitute

To sustain the charge of patronizing a prostitute, the State must prove the following proposition:

That the defendant engaged in an act of sexual penetration with a prostitute not [(his) (her)] spouse.

[or]

That the defendant entered or remained in a place of prostitution with the intent to engage in an act of sexual penetration with a person not [(his) (her)] spouse.

If you find from your consideration of the all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-18 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-18 (1991)).

Give Instruction 9.19.

Use applicable paragraph and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the proposition. See Instruction 5.03.

9.21 Definition Of Prostitute

The word "prostitute" means a person who [(performs) (offers to perform) (agrees to perform)] [(an act of sexual penetration) (any touching or fondling of the sex organs of a person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

Committee Note

720 ILCS 5/11-14 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-14 (1991)), amended by P.A. 83-1067, effective July 1, 1984; and P.A. 88-680, effective January 1, 1995.

Use applicable bracketed material.

9.22 Definition Of Place Of Prostitution

The term “place of prostitution” means any place which is used for the purpose of offering seclusion or shelter for [(an act of sexual penetration) (any touching or fondling of the sex organs of a person by another person for the purpose of sexual arousal or gratification)] for any money, property, token, object, or article or anything of value.

Committee Note

720 ILCS 5/11-14, 11-17 (West 1992) (formerly Ill. Rev. Stat. ch. 38, §§ 11-14, 11-17 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Use applicable bracketed material.

9.23 Definition Of Pimping

A person commits the offense of pimping when he receives any money, property, token, object, or article or anything of value from a prostitute, not for lawful consideration, knowing that it was earned in whole or in part from the practice of prostitution.

Committee Note

720 ILCS 5/11-19 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-19 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.09, defining the word “prostitution,” and Instruction 9.21, defining the word “prostitute.”

Use applicable bracketed material.

9.24 Issues In Pimping

To sustain the charge of pimping, the State must prove the following propositions:

First Proposition: That the defendant received any money, property, token, object, or article or anything of value from a prostitute; and

Second Proposition: That there was no lawful consideration for the defendant's receipt of the money, property, token, object, or article or thing of value; and

Third Proposition: That the defendant knew that the money, property, token, object, or article or thing of value was earned in whole or in part from the practice of prostitution.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-19 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-19 (1991)), amended by P.A. 88-680; effective January 1, 1995.

Give Instruction 9.23.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.25 Definition Of Juvenile Pimping [Or Pimping For Institutionalized Mentally Retarded Person]

A person commits the offense of juvenile pimping when he receives any money, property, token, object, or article or anything of value from a prostitute [(under the age of 16 years) (who is an institutionalized severely or profoundly mentally retarded person)], not for lawful consideration, knowing it was earned in whole or in part from the practice of prostitution.

Committee Note

720 ILCS 5/11-19.1(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-19.1(a) (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.26.

Give Instruction 9.09, defining the word “prostitution.”

Give Instruction 11.656, defining the phrase “institutionalized severely or profoundly mentally retarded person,” when applicable.

Use applicable bracketed material.

9.25A Affirmative Defense To Juvenile Pimping [Or Pimping For Institutionalized Mentally Retarded Person]

It is a defense to the charge of juvenile pimping that, at the time of the act giving rise to the charge, the defendant reasonably believed the person involved was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)].

Committee Note

720 ILCS 5/11-19.1(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-19.1(b) (1991)).

Give this instruction when the issue is raised by the evidence. See Chapter 38, Section 3-2 and the Introduction to Chapter 24-25.00.

9.26 Issues In Juvenile Pimping [Or Pimping For Institutionalized Mentally Retarded Person]

To sustain the charge of juvenile pimping, the State must prove the following propositions:

First Proposition: That the defendant received any money, property, token, object, or article or anything of value from a prostitute; and

Second Proposition: That there was no lawful consideration for the defendant's receipt of the money, property, token, object, or article or thing of value; and

Third Proposition: That the defendant knew that the money, property, token, object, or article or thing of value was earned in whole or in part from the practice of prostitution; and

Fourth Proposition: That the prostitute was [(under the age of 16 years) (an institutionalized severely or profoundly mentally retarded person)] at the time the defendant received the money, property, token, object, or article or thing of value[; and

Fifth Proposition: That the defendant did not reasonably believe that the prostitute was [(of the age of 16 years or older) (not an institutionalized severely or profoundly mentally retarded person)]]].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-19.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-19.1 (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.25.

Give the bracketed Fifth Proposition when the issue is raised by the evidence. When there is sufficient evidence to raise the issue, the burden is on the State to overcome the defense beyond a reasonable doubt. See Section 3-2 and the Introduction to Chapter 24-25.00.

Give Instruction 4.13, defining the term "reasonable belief," when requested by the defendant and when the issue is raised by the evidence.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

9.27 Definition Of Obscenity

A person commits the offense of obscenity when he, [(with knowledge of the nature or content thereof) (recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof)],

[1] [(sells) (delivers) (provides) (offers or agrees to) [(sell) (deliver) (provide)]] any obscene [(writing) (picture) (record) [or other representation or embodiment of the obscene]].

[or]

[2] [(presents) (directs)] an obscene [(play) (dance) [or other performance]].

[or]

[3] participates directly in that portion of an obscene [(play) (dance) [or other performance]] which makes it obscene.

[or]

[4] [(publishes) (exhibits) [or otherwise makes available]] anything obscene.

[or]

[5] performs an obscene act [or otherwise presents an obscene exhibition of his body] for gain.

[or]

[6] [(creates) (buys) (procures) (possesses)] obscene matter or material with intent to disseminate it.

[or]

[7] [(creates) (buys) (procures) (possesses)] obscene matter or material with intent to disseminate it in violation of the [(penal laws) (regulations)] of _____.

[or]

[8] advertises or otherwise promotes the sale of material represented or held out by him to be obscene, whether or not it is obscene.

Committee Note

720 ILCS 5/11-20(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-20(a) (1991)).

Give Instructions 9.27A and 9.28.

Insert in the blank the name of the other jurisdiction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.27A Definition Of Obscene

Any [(material) (performance)] is obscene if

- [1] the average person, applying contemporary adult community standards, would find that the work, taken as a whole, appeals to the prurient interest; and
- [2] the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions, or lewd exhibition of the genitals; and
- [3] a reasonable person, taking the [(material) (performance)] as a whole, would find no serious literary, artistic, political, or scientific value.

[Obscenity is judged with reference to the standards of adults, except that it is judged with reference to children or other specially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be specially designed for or directed to such an audience.]

In determining how any [(material) (performance)] would be viewed by the average person, you are to consider how it would be viewed by ordinary adults in the whole State of Illinois rather than by the people in any single city or town or region within the State.

Committee Note

720 ILCS 5/11-20(b) and (c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-20(b) and (c) (1991)).

This instruction is based on the present language of Sections 11-20(b) and (c), together with additional language in paragraph [3] suggested by the *United States Supreme Court in Pope v. Illinois*, 481 U.S. 497, 107 S. Ct. 1918, 95 L. Ed. 2d 439 (1987), at footnote 3. *See also Miller v. California*, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973), and *People v. Ridens*, 59 Ill. 2d 362, 321 N.E.2d 264 (1974).

The final paragraph of the instruction complies with the requirement of *People v. Butler*, 49 Ill. 2d 435, 275 N.E.2d 400 (1971), and *People v. Ridens*, 59 Ill. 2d 362, 321 N.E.2d 264 (1974), that the jury must be instructed on a state-wide standard.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.27B Inferences Of Intent To Disseminate In Obscenity Cases

If you find that the defendant

[1] [(created) (purchased) (procured) (possessed)] a [(mold) (engraved plate) [or other embodiment]] of obscenity specially adopted for reproducing multiple copies,

[or]

[2] possessed more than three copies of the same obscene material,
you may infer that defendant intended to disseminate obscene material.

Committee Note

720 ILCS 5/11-20(e) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-20(e) (1991)).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

9.27C Obscenity—Affirmative Defenses

It is a defense to the charge of obscenity that the dissemination

[1] was not for gain and was made to personal associates other than children under 18 years of age.

[or]

[2] was to institutions or individuals having scientific or other special justification for possession of such material.

Committee Note

720 ILCS 5/11-20(f) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-20(f) (1991)).

This instruction presents alternative defenses. Give one or both of these defenses if the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24–25.00.

Use applicable paragraphs.

9.28 Issues In Obscenity

To sustain the charge of obscenity, the State must prove the following propositions:

First Proposition: That the defendant [(sold) (delivered) (provided) (offered or agreed to [(sell) (deliver) (provide))]] an obscene _____;

[or]

First Proposition: That the defendant [(presented) (directed)] an obscene [(play) (dance) [or other performance]];

[or]

First Proposition: That the defendant participated directly in that portion of an obscene [(play) (dance) [or other performance]] which made it obscene;

[or]

First Proposition: That the defendant [(published) (exhibited) [or otherwise made available]] anything obscene;

[or]

First Proposition: That the defendant performed [(an obscene act) [or otherwise presented an obscene exhibition of his body]] for gain;

[or]

First Proposition: That the defendant [(created) (bought) (procured) (possessed)] obscene matter or material with intent to disseminate it;

[or]

First Proposition: That the defendant advertised or otherwise promoted the sale of material represented or held out by him to be obscene whether or not it was obscene;

and

Second Proposition: That the defendant then knew the nature or content of _____[; and

Third Proposition: That the dissemination was for gain or was made to persons other than personal associates of the defendant.

[or]

Third Proposition: That the dissemination was not to institutions or individuals having scientific or other special justification for possession of such material].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-20(a) and (b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-20(a) and (b) (1991)).

Give Instructions 9.27 and 9.27A.

When intent to disseminate is an issue, give Instruction 9.27B.

When the defendant raises the affirmative defense(s) contained in Section 11-20(f), give Instruction 9.27C and use the applicable alternative(s) from the Third Proposition. Once a defense is raised by the introduction of sufficient evidence supporting it, the State must overcome the defense beyond a reasonable doubt. See Chapter 720, Section 3-2 and the Introduction to Chapter 24–25.00.

If the defendant is alleged to have the intent to disseminate obscene matter in violation of the laws of a jurisdiction other than Illinois, the jury must be specifically instructed on the law of the other jurisdiction.

The Third Proposition presents alternative defenses. However, the first alternative is based upon Section 11-20(f)(1) which states the defense in the conjunctive “was not for gain *and* was made to personal associates” Therefore, if the State overcomes *either* element of the defense it may prevail. Accordingly, when submitted to the jury as an issue in the case, it is phrased in the disjunctive.

Insert in the appropriate blank the name of the other jurisdiction.

Insert in the appropriate blanks the descriptive word, e.g., writing, picture, record, exhibition, or other presentation or embodiment of the obscene.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.29 Definition Of Child Pornography

A person commits the offense of child pornography when he

[1] [[(films) (videotapes) (photographs) (depicts) (portrays)] by any means of visual medium or reproduction) (depicts by computer)] any [(child he knows or reasonably should know to be under the age of 18) (institutionalized severely or profoundly mentally retarded person)] where such [(child) (institutionalized severely or profoundly mentally retarded person)] is:

[a] actually or by simulation engaged in any act of sexual intercourse with any [(person) (animal)].

[or]

[b] actually or by simulation engaged in any act of sexual contact involving the sex organs of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the [(mouth) (anus) (sex organs)] of another [(person) (animal)].

[or]

[c] actually or by simulation engaged in any act of sexual contact involving the [(mouth) (anus) (sex organs)] of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the sex organs of another [(person) (animal)].

[or]

[d] actually or by simulation engaged in any act of masturbation.

[or]

[e] actually or by simulation portrayed as [(being the object of) (otherwise engaged in)] any act of lewd [(fondling) (touching) (caressing)] involving another [(person) (animal)].

[or]

[f] actually or by simulation engaged in any act of [(excretion) (urination)] within a sexual context.

[or]

[g] actually or by simulation [(portrayed) (depicted)] as [(bound) (fettered) (subject to sadistic abuse) (subject to masochistic abuse) (subject to sadomasochistic abuse)] in any sexual context.

[or]

[h] [(depicted) (portrayed)] in any [(pose) (posture) (setting)] involving a lewd exhibition of the [(unclothed genitals) (pubic area) (buttocks) (a fully or partially developed breast)] of the [(child) (other person)] [if the [(child) (other person)] is a female].

[or]

[2] with the knowledge of the [(nature) (content)] thereof, [(reproduces)

(disseminates) (offers to disseminate) (exhibits) (possesses with the intent to disseminate)] any [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of any [(child) (institutionalized severely or profoundly mentally retarded person)] whom the person knows or reasonably should know to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in _____.

[or]

[3] with knowledge of the [(subject matter) (theme)] thereof, produces any [(stage play) (live performance) (film) (videotape) (depiction by computer) [or other similar visual portrayal]] which includes [(a child whom the person knows or reasonably should know to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in _____.

[or]

[4] [(solicits) (uses) (persuades) (induces) (entices) (coerces)] any [(child whom he knows or reasonably should know to be under the age of 18) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] [(is) (will be depicted, actually,) (will be depicted, by simulation,)] in _____.

[or]

[5] is a [(parent) (step-parent) (legal guardian) (other person having care or custody)] of [(a child whom the person knows or reasonably should know to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] and who knowingly [(permits) (induces) (promotes) (arranges for)] such [(child) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live performance) (film) (videotape) (photograph) (depiction by computer) [or other similar visual presentation, portrayal, or simulation]] in which _____.

[or]

[6] with the knowledge of the [(nature) (content)] thereof, possesses any [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of any [(child) (institutionalized severely or profoundly mentally retarded person)] whom the person knows or reasonably should know to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] engaged in _____.

[or]

[7] [(solicits) (uses) (persuades) (induces) (entices) (coerces)] a person to provide any [(child under the age of 18) (institutionalized severely or profoundly mentally retarded person)] to appear in any [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or

profoundly mentally retarded person)] will be depicted, actually or by simulation, in _____.

Committee Note

720 ILCS 5/11-20.1(a) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 11-20.1(a) (1991)), amended by P.A. 84-1029, effective November 18, 1985; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; P.A. 85-1447, effective January 1, 1990; P.A. 86-820, effective January 1, 1990; P.A. 86-1168, effective January 1, 1991; P.A. 87-1069, effective January 1, 1993; and P.A. 88-680, effective January 1, 1995.

When paragraphs [2], [3], [4], [5], [6], or [7] are used, the applicable subparagraph or subparagraphs [a] through [h] of paragraph [1] must be included where the blank appears.

When applicable, give Instruction 11.65G, defining the phrase “institutionalized severely or profoundly mentally retarded person.”

When applicable, give the definitions of the terms “disseminate,” “produce,” “reproduce,” “depict by computer,” and “depiction by computer” as set forth in Instruction 9.29B. If the definition of “computer,” “computer program,” or “data” becomes an issue, see 720 ILCS 5/16D-2 (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 16D-2 (1991)).

When applicable, give Instruction 9.01A, defining the words “solicits” and “solicitation.”

Sections 11-20.1(b)(1), (b)(2), and (b)(3) provide affirmative defenses to the offense of child pornography which are set forth in Instruction 9.29A.

Section 11-20.1(b)(4) provides a presumption that under certain circumstances, the defendant possessed child pornography with the intent to disseminate. This presumption is set forth in Instruction 9.29C.

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.29A Affirmative Defenses To Child Pornography

[1] It is a defense to a charge of child pornography that the defendant reasonably believed, under all of the circumstances, that the [(child was 18 years of age or older) (person was not an institutionalized severely or profoundly mentally retarded person)] but only where, prior to the act or acts giving rise to prosecution, he [(took some affirmative action) (made a *bona fide* inquiry)] designed to ascertain whether the [(child was 18 years of age or older) (person was not an institutionalized severely or profoundly mentally retarded person)] and his reliance upon the information so obtained was clearly reasonable.

[or]

[2] It is a defense to a charge of child pornography that the defendant was employed by [(a public library) (any library operated by an institution accredited by a generally recognized accrediting agency)] at the time the act leading to the charge of child pornography took place and such act was committed during the course of employment.

[or]

[3] The charge of child pornography shall not apply to the performance of official duties by [(law enforcement officers) (prosecuting officers) (court personnel) (attorneys) (*bona fide* treatment programs conducted by licensed physicians) (*bona fide* treatment programs conducted by licensed psychologists) (*bona fide* treatment programs conducted by licensed social workers) (professional education programs conducted by licensed physicians) (professional education programs conducted by licensed psychologists) (professional education programs conducted by licensed social workers)].

Committee Note

720 ILCS 5/11-20.1(b) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 11-20.1(b) (1991)), amended by P.A. 84-1029, effective November 18, 1985; and P.A. 85-1392, effective January 1, 1989.

Give this instruction when the defense is raised by the evidence. See 720 ILCS 5/3-2 and the Introduction to Chapter 24-25.00.

Use applicable paragraphs and bracketed material.

9.29B Definitions Of Disseminate, Produce, And Reproduce Under The Offense Of Child Pornography

[For purposes of the offense of child pornography,] [(the) (The)] word “disseminate” means to

[1] sell, distribute, exchange, or transfer possession, whether with or without consideration.

[or]

[2] make a depiction by computer available for distribution or downloading through facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.

[For purposes of the offense of child pornography,] [(the) (The)] word “produce” means to direct, promote, advertise, publish, manufacture, issue, present, or show.

[For purposes of the offense of child pornography,] [(the) (The)] word “reproduce” means to make a duplication or copy.

[For purposes of the offense of child pornography,] [(the) (The)] phrase “depict by computer” means to generate, create, or cause to be created or generated a computer program or data that after being processed by a computer, either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

[For purposes of the offense of child pornography,] [(the) (The)] phrase “depiction by computer” means a computer program or data that after being processed by a computer, either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.

Committee Note

720 ILCS 5/11-20.1(f) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 11-20.1(f) (1991)), amended by P.A. 88-680, effective January 1, 1995.

These definitions apply only to the offense of child pornography.

9.29C Presumption Of Possession With Intent To Disseminate—Child Pornography

If you find that the defendant possessed one or more of the same film, videotape, visual reproduction, or depiction by computer in which child pornography is depicted, you may infer that the defendant possessed these materials with the intent to disseminate them.

Committee Note

720 ILCS 5/11-20.1(b)(4) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 11-20.1(b)(4) (1991)), created by P.A. 85-1447, effective January 1, 1990, amended by P.A. 88-680, effective January 1, 1995.

This presumption applies only to the offense of child pornography.

See Instruction 9.29B regarding the definitions of the terms “disseminate” and “depiction by computer.”

9.30 Issues In Child Pornography

To sustain the charge of child pornography, the State must prove the following propositions:

[1] *First Proposition:* That the defendant [(filmed) (videotaped) (photographed) (depicted) (portrayed)] by means of visual medium or reproduction) (depicted by computer)] [(a child he knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[2] *First Proposition:* That the defendant with the knowledge of the [(nature) (content)] thereof, [(reproduced) (disseminated) (offered to disseminate) (exhibited) (possessed with the intent to disseminate)] a [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of [(a child) (an institutionalized severely or profoundly mentally retarded person)] whom the defendant knew or reasonably should have known to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[3] *First Proposition:* That the defendant with the knowledge of the [(subject matter) (theme)] thereof, produced a [(stage play) (live performance) (film) (videotape) (depiction by computer) [or other similar visual portrayal]] which included [(a child whom the defendant knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[4] *First Proposition:* That the defendant [(solicited) (used) (persuaded) (induced) (enticed) (coerced)] [(a child whom he knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] to appear in a [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] [(would be) (would be depicted, actually) (would be depicted, by simulation)] in the following [(act) (pose) (setting)]: _____;

[or]

[5] *First Proposition:* That the defendant was a [(parent) (step-parent) (legal guardian) (other person having care or custody)] of [(a child whom the defendant knew or reasonably should have known to be under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] and that the defendant knowingly [(permitted) (induced) (promoted) (arranged for)] such [(child) (institutionalized severely or profoundly mentally retarded person)] to appear in a [(stage play) (live performance) (film) (videotape) (photograph) (depiction by computer) [or other similar visual [(presentation)

(portrayal) (simulation))] of the following [(act) (activity)]: _____;

[or]

[6] *First Proposition:* That the defendant with the knowledge of the [(nature) (content)] thereof, possessed a [(film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] of [(a child) (an institutionalized severely or profoundly mentally retarded person)] whom the defendant knew or reasonably should have known to be [(under the age of 18) (an institutionalized severely or profoundly mentally retarded person)];

[or]

[7] *First Proposition:* That the defendant [(solicited) (used) (persuaded) (induced) (enticed) (coerced)] a person to provide [(a child under the age of 18) (an institutionalized severely or profoundly mentally retarded person)] to appear in a [(stage play) (live presentation) (film) (videotape) (photograph) (depiction by computer) [or other similar visual reproduction]] in which the [(child) (institutionalized severely or profoundly mentally retarded person)] would be depicted, actually or by simulation: _____;

and

[a] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of sexual intercourse with [(a person) (an animal)].

[or]

[b] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of sexual contact involving the sex organs of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the [(mouth) (anus) (sex organs)] of another [(person) (animal)].

[or]

[c] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of sexual contact involving the [(mouth) (anus) (sex organs)] of the [(child) (institutionalized severely or profoundly mentally retarded person)] and the sex organs of another [(person) (animal)].

[or]

[d] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of masturbation.

[or]

[e] *Second Proposition:* That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation was portrayed as [(being the object of) (otherwise engaged in)] an act of lewd

[(fondling) (touching) (caressing)] involving another [(person) (animal)].

[or]

[f] *Second Proposition*: That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation engaged in an act of [(excretion) (urination)] within a sexual context.

[or]

[g] *Second Proposition*: That such [(child) (institutionalized severely or profoundly mentally retarded person)] actually or by simulation was [(portrayed) (depicted)] as [(bound) (fettered) (subject to sadistic abuse) (subject to masochistic abuse) (subject to sadomasochistic abuse)] in a sexual context.

[or]

[h] *Second Proposition*: That such [(child) (institutionalized severely or profoundly mentally retarded person)] was [(depicted) (portrayed)] in a [(pose) (posture) (setting)] involving a lewd exhibition of the [(unclothed genitals) (pubic area) (buttocks) (a fully or partially developed breast)] of the [(child) (institutionalized severely or profoundly mentally retarded person) (other person)] [if the [(child) (institutionalized severely or profoundly mentally retarded person) (other person)] is a female].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-20.1(a) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 11-20.1(a) (1991)), amended by P.A. 84-1029, effective November 18, 1985; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; P.A. 85-1447, effective January 1, 1990; P.A. 86-820, effective January 1, 1990; P.A. 86-1168, effective January 1, 1991; P.A. 87-1069, effective January 1, 1993; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.29.

When applicable, insert in the blank the act, pose, setting, or activity at issue.

The bracketed numbers [1] through [7] for the First Proposition correspond to the alternatives of the same number in Instruction 9.29, the definitional instruction for this offense, and the bracketed letters [a] through [h] for the Second Proposition correspond to the alternatives of the same letter in Instruction 9.29. Select the alternatives that correspond to the alternatives selected from the definitional instruction.

Use applicable bracketed paragraphs and material. Based upon the evidence, one or more alternative propositions may be applicable.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.31 Definition Of Distributing Harmful Material

A person commits the offense of distributing harmful material when he knowingly [(distributes) (sends) (causes to be sent) (exhibits) (offers to distribute) (offers to exhibit)] any harmful material to a child the defendant [(knows) (reasonably should know)] was then under the age of 18 years.

Committee Note

720 ILCS 5/11-21(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-21(a) (1991)).

Give Instructions 9.31A and 9.32.

See Instruction 9.31B.

Use applicable bracketed material.

9.31A Definitions Of Harmful Material, Distribute, And Knowingly

The term “harmful material” means material which, considered by the average person, applying contemporary standards, and taken as a whole,

- [1] predominantly appeals to a prurient interest; that is, a shameful or morbid interest in nudity, sex, or excretion; and
- [2] which goes substantially beyond customary limits of candor in describing or representing nudity, sex, or excretion; and
- [3] whose redeeming social importance is substantially less than its prurient appeal.

The word “material” means any writing, picture, record, or other representation or embodiment.

The word “distribute” means any transfer of possession, whether with or without consideration.

The word “knowingly” means that the person knew the contents of the subject matter or recklessly failed to exercise reasonable inspection which would have disclosed its contents.

You should consider whether the predominant appeal of the material is to a prurient interest by judging it with reference to average children of the same general age of the child to whom such material allegedly was offered, distributed, sent, or exhibited, unless it appears from the nature of the matter or the circumstances of its dissemination, distribution, or exhibition that it is designed for specially susceptible groups. In that case, you should judge the predominant appeal of the material with reference to the group who was intended to or probably would receive it.

Committee Note

720 ILCS 5/11-21(b) and (c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-21(b) and (c) (1991)).

Give Instructions § 9.31 and § 9.32.

See Instruction 9.31B.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.31B Affirmative Defenses To Charge Of Distributing Harmful Material

It shall be a defense to the charge of distributing harmful material that

[1] the defendant distributed or exhibited the material in aid of a legitimate scientific or educational purpose.

[or]

[2] the defendant was a parent of the child to whom the harmful material was distributed or exhibited.

[or]

[3] the defendant demanded, was shown, and relied upon a document issued by the federal, state, county, or municipal government, or any subdivision or agency of government, as proof of the age of the child. Such documents include, but are not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act, or an identification card issued to a member of the armed forces.

[or]

[4] where the alleged sale or distribution of the harmful material was the result of an advertisement, and neither the order for the material nor its delivery involved any personal confrontation between the child and the defendant or his employees or agents; and

[a] the advertisement contained the following statement or one substantially similar to it:

“NOTICE: It is unlawful for any person under 18 years of age to purchase the matter herein advertised. Any person under 18 years of age who falsely states that he is not under 18 years of age for the purpose of obtaining the material advertised herein, is guilty of a Class B misdemeanor under the laws of the State of Illinois”; and

[b] the defendant required the child to certify that he was not under the age of 18 years; and

[c] the child falsely stated that he was not under the age of 18 years.

Committee Note

720 ILCS 5/11-21(e) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-21(e) (1991)).

Give this instruction when the issue is raised by the evidence. See Introduction to Chapter 24-25.00.

Use applicable paragraphs and subparagraphs.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.32 Issues In Distributing Harmful Material

To sustain the charge of distributing harmful material, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(distributed) (sent) (caused to be sent) (exhibited) (offered to distribute) (offered to exhibit)] harmful material to _____; and

Second Proposition: That the defendant [(knew the material was harmful) (recklessly failed to exercise reasonable inspection which would have disclosed that it was harmful)]; and

Third Proposition: That _____ was then under the age of 18 years; and

Fourth Proposition: That the defendant knew or failed to exercise reasonable care in ascertaining that _____ was then under the age of 18 years[; and

Fifth Proposition: That the defendant did not distribute or exhibit the harmful material in aid of a legitimate scientific or educational purpose

[or]

Fifth Proposition: That the defendant was not a parent of _____

[or]

Fifth Proposition: That the defendant did not demand, was not shown, and did not rely upon a government document as proof of the age of _____, such as a motor vehicle operator's license, a Selective Service registration certificate, or an armed forces identification card

[or]

Fifth Proposition: That the defendant, if the transaction did not involve a personal confrontation with _____, did not supply a notice warning _____ against falsely stating his age and that the defendant did not require _____ to certify that he was under the age of 18 years].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-21 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-21 (1991)).

Give Instructions 9.31 and 9.31A.

Give the appropriate Fifth Proposition when the issue is raised by the evidence. See the Introduction to Chapter 24–25.00.

See Instruction 9.31B.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.33 Definition Of Sexual Relations Within Families

A person commits the offense of sexual relations within families when he commits an act of sexual penetration and

[1] knows that he is related to the victim as [(brother) (sister)] either of the whole-blood or the half-blood.

[or]

[2] knows that he is related to the victim as [(father) (mother)] regardless of legitimacy and regardless of whether the child was of the whole-blood or was adopted, and the victim was 18 years of age or over when the act was committed.

[or]

[3] knows that he is related to the victim as [(stepfather) (stepmother)] and the victim was 18 years of age or over when the act was committed.

Committee Note

720 ILCS 5/11-11 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-11 (1991)).

Give Instruction 9.34.

The Committee deleted the term “half-blood” from paragraph [2], even though the term is found in the statute, because the term “half-blood” describes a relationship between siblings and does not concern the relationship between a child and his mother or father. See *People v. Parker*, 123 Ill. 2d 204, 121 Ill. Dec. 941, 526 N.E.2d 135 (1988).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.34 Issues In Sexual Relations Within Families

To sustain the charge of sexual relations within families, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That the defendant knew that [(he) (she)] was related to _____ as [(brother) (sister)] either of the whole-blood or of the half-blood.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That the defendant knew that [(he) (she)] was related to _____ as [(father) (mother)] regardless of legitimacy and regardless of whether _____ is of the whole-blood or adopted; and

Third Proposition: That _____ was 18 years of age or over when the act was committed.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That the defendant knew that [(he) (she)] was related to _____ as [(stepfather) (stepmother)]; and

Third Proposition: That _____ was 18 years of age or over when the act was committed.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-11 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-11 (1991)).

Give Instruction 9.33.

The term “sexual penetration” is defined in Instruction 11.65E.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.35 Definition Of Exploitation Of A Child [Or Institutionalized Mentally Retarded Person]

A person commits the offense of exploitation of a child when he confines [(a child under the age of 16 years) (an institutionalized severely or profoundly mentally retarded person)] against his will by [(the infliction or threat of imminent infliction of great bodily harm) (the infliction or threat of imminent infliction of permanent disability or disfigurement) (administering to [(the child) (an institutionalized severely or profoundly mentally retarded person)] without his consent or by threat or deception and for other than medical purposes, any [(alcoholic intoxicant) (drug)])]

and

[(compels [(the child) (the institutionalized severely or profoundly mentally retarded person)] to become a prostitute) (arranges a situation in which [(the child) (the institutionalized severely or profoundly mentally retarded person)] may practice prostitution) (receives any money, property, token, object, or article or anything of value from [(the child) (an institutionalized severely or profoundly mentally retarded person)] knowing it was obtained in whole or in part from the practice of prostitution)].

Committee Note

720 ILCS 5/11-19.2 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-19.2 (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.36.

Give Instruction 9.09, defining the term "prostitution."

Give Instruction 9.35A when the issue of consent is raised by the evidence.

Give Instruction 11.65G, defining the term "institutionalized severely or profoundly mentally retarded person," when applicable.

If the administration of a drug is an issue and there arises a need for a definitional instruction concerning the nature of the substance involved, give the appropriate statutory definition found in 720 ILCS 550/3 or 570/102. See the Introduction to Chapter 17.

Use applicable bracketed material.

9.35A Definition Of Lack Of Consent In Exploitation Of A Child [Or Institutionalized Mentally Retarded Person]

The term “administering [(an alcoholic intoxicant) (a drug)] to [(a child under the age of 13 years) (an institutionalized severely or profoundly mentally retarded person)] without consent” means the [(alcoholic intoxicant) (drug)] is administered without the consent of the [(child’s) (person’s)] parents or legal guardian.

Committee Note

720 ILCS 5/11-19.2(B) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 11-19.2(B) (1991)).

Give this instruction when the issue of consent is raised by the evidence.

The portion of the instruction concerning the mental disability of the victim was added by P.A. 85-1392 and should not be used for offenses committed prior to the effective date of that Act.

The Committee takes no position as to whether consent by the parents or legal guardian operates as a defense to the offense of exploitation of a child.

Use applicable bracketed material.

9.36 Issues In Exploitation Of A Child [Or Institutionalized Mentally Retarded Person]

To sustain the charge of exploitation of a child, the State must prove the following propositions:

First Proposition: That the defendant confined _____ against his will by inflicting or threatening to imminently inflict great bodily harm;

[or]

First Proposition: That the defendant confined _____ against his will by inflicting or threatening to imminently inflict permanent disability or disfigurement;

[or]

First Proposition: That the defendant confined _____ against his will by administering to _____ without his consent or by threat or deception and for other than medical purposes, any [(alcoholic intoxicant) (drug)];

and

Second Proposition: That _____ at the time was [(under 16 years of age) (an institutionalized severely or profoundly mentally retarded person)]; and

Third Proposition: That the defendant compelled _____ to become a prostitute,

[or]

Third Proposition: That the defendant arranged a situation in which _____ may practice prostitution.

[or]

Third Proposition: That the defendant received any money, property, token, object, or article or anything of value from _____ knowing it was obtained in whole or in part from the practice of prostitution.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-19.2 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-19.2 (1991)), amended by P.A. 85-1392, effective January 1, 1989; and P.A. 88-680, effective January 1, 1995.

Give Instruction 9.35.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.37 Definition Of Sexual Exploitation Of A Child

A person commits the offense of sexual exploitation of a child when, while in the presence of a child, and with intent or knowledge that the child would view his acts, he

[1] engages in [(masturbation) (sexual conduct) (sexual penetration)].

[or]

[2] exposes his [(sex organs) (anus) (breast)] for the purpose of sexual arousal or gratification of himself or the child.

The word "child" means a person under 17 years of age.

Committee Note

720 ILCS 5/11-9.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-9.1 (1992)), added by P.A. 87-1198, effective September 25, 1992.

Give Instruction 9.38.

When "sexual conduct" or "sexual penetration" is an issue, give Instruction 11.65D or 11.65E defining those terms.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.38 Issues In Sexual Exploitation Of A Child

To sustain the charge of sexual exploitation of a child, the State must prove the following propositions:

First Proposition: That the defendant was in the presence of a child; and

[1] *Second Proposition:* That the defendant engaged in [(masturbation) (sexual conduct) (sexual penetration)]; and

[or]

[2] *Second Proposition:* That the defendant exposed his [(sexual organs) (anus) (breast)] for the purpose of sexual arousal or gratification of himself or the child; and

Third Proposition: That the defendant did so while [(intending) (knowing)] that the child would view his acts; and

Fourth Proposition: That the child was under 17 years of age.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-9.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 11-9.1 (1992)), added by P.A. 87-1198, effective September 25, 1992.

Give Instruction 9.37.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.39 Definition Of Solicitation Of A Sexual Act

A person commits the offense of solicitation of a sexual act when he offers a person not his spouse any money, property, token, object, or article or anything of value to perform any [(act of sexual penetration) (touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)].

Committee Note

720 ILCS 5/11-14.1 (West Supp. 1993), added by P.A. 88-325, effective January 1, 1994; amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.40.

When sexual penetration is an issue, give Instruction 11.65E.

Use applicable bracketed material.

9.40 Issue In Solicitation Of A Sexual Act

To sustain the charge of solicitation of a sexual act, the State must prove the following proposition:

That the defendant offered a person not his spouse any money, property, token, object, or article or anything of value to perform any [(act of sexual penetration) (touching or fondling of the sex organs of one person by another person for the purpose of sexual arousal or gratification)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-14.1 (West Supp. 1993), added by P.A. 88-325, effective January 1, 1994; amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 9.39.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.41 Definition Of Indecent Solicitation Of An Adult

A person commits the offense of indecent solicitation of an adult when he [(intentionally) (knowingly) (recklessly)] arranges for a person 17 years of age or over to commit an act of sexual [(penetration) (conduct)] with a person [(under 13 years of age) (13 years of age or older but under 17 years of age) (under 17 years of age)].

Committee Note

720 ILCS 5/11-6.5 (West Supp. 1993), added by P.A. 88-165, effective January 1, 1994.

Give Instruction 9.42.

Give either Instruction 11.65D, defining “sexual conduct,” or Instruction 11.65E, defining “sexual penetration,” whichever applies.

Section 11-6.5(b) enhances the penalty for a violation of this statute when the second person is under 13 years of age. Thus, the Committee has included a bracketed alternative covering the age of the second person. Use the second alternative (“13 years of age or older but under 17 years of age”) only when that second person’s age is an issue. When age is an issue, it should be resolved by the jury.

Because Section 11-6.5 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

9.42 Issues In Indecent Solicitation Of An Adult

To sustain the charge of indecent solicitation of an adult, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] arranged for a person 17 years of age or over to commit an act of sexual [(penetration) (conduct)] with a second person; and

Second Proposition: That at the time defendant did so, the second person was [(under 13 years of age) (13 years of age or older but under 17 years of age) (under 17 years of age)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-6.5 (West Supp. 1993), added by P.A. 88-165, effective January 1, 1994.

Give Instruction 9.41.

Give either Instruction 11.65D, defining “sexual conduct,” or Instruction 11.65E, defining “sexual penetration,” whichever applies.

See the Committee Note to Instruction 9.41 regarding the bracketed alternative covering the age of the person referred to in the Second Proposition.

Because Section 11-6.5 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

9.43 Definition Of “Sex Offender”

“Sex Offender” means any person who is charged with [(a sex offense) (the attempt to commit a sex offense)], [(pursuant to Illinois law) (pursuant to federal law) (pursuant to another state’s law) (pursuant to a foreign country’s law)], and

is convicted of [(such offense) (an attempt to commit such offense)].

or

is found not guilty by reason of insanity [(pursuant to a discharge hearing) (following a hearing conducted pursuant to a (federal) (state) (foreign country’s law))] of [(such offense) (an attempt to commit such offense)].

or

is the subject of a finding not resulting in an acquittal [(at a discharge hearing) (following a hearing conducted pursuant to a (federal) (state) (foreign country’s law))] for the alleged [(commission) (attempted commission) of such offense].

or

“Sex Offender” means any person who is [(certified as a sexually dangerous person) (found to be a sexually violent person)] [(pursuant to Illinois law) (pursuant to federal law) (pursuant to another state’s law) (pursuant to a foreign country’s law) (subject to the Interstate Agreements on Sexually Dangerous Persons Act)].

Committee Note

730 ILCS 150/2(A). When the State relies upon a prior conviction or disposition from another jurisdiction, an issue may arise concerning whether that jurisdiction’s statute is “substantially similar” to that of Illinois. This is a question of law to be determined by the court rather than a factual question on which the jury should be instructed. *See People v. Guest*, 115 Ill. 2d 72, 104 Ill. Dec. 698, 503 N.E.2d 255 (1986); *See also* Committee Note, Instruction 7B.07[3].

See 725 ILCS 205 *et seq.* for Sexually Dangerous Persons Act

See 45 ILCS 20/1 *et seq.* for Interstate Agreements on Sexually Dangerous Persons Act

See 725 ILCS 207/1 *et seq.* for Sexually Violent Persons Commitment Act

Use applicable bracketed material. The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.43A Definition Of “Sexual Predator”

A “sexual predator” means any person [(who is convicted of _____.)

or

(who is (certified as sexually dangerous) (found to be a sexually violent person) (convicted of a second or subsequent sex offense which requires registration) [(pursuant to Illinois law) (pursuant to a substantially similar federal law) (pursuant to a substantially similar law in another state) (pursuant to a foreign country’s law) (subject to the Interstate Agreements on Sexually Dangerous Persons Act))].

Committee Note

730 ILCS 150/2(E).

See 725 ILCS 205 *et seq.* for Sexually Dangerous Persons Act.

See 45 ILCS 20/1 *et seq.* for Interstate Agreements on Sexually Dangerous Persons Act.

See 725 ILCS 207/1 *et seq.* for Sexually Violent Persons Commitment Act.

Insert appropriate offense(s) in the blank. See 730 ILCS 150/2 (E)(1–2) for each possible alternative definition of qualifying offenses, and their respective effective dates.

Use applicable bracketed material.

9.43B Definition Of "Sex Offense"

A "sex offense" includes (an attempt to commit) [(pursuant to Illinois law) (pursuant to federal law) (pursuant to another state's law) (pursuant to a foreign country's law)]

[1] [(a violation of _____) (a former law substantially equivalent to _____)].

or

[2] a felony violation of _____ when the victim is a person under 18 years of age, the defendant is not a parent of the victim, and the offense was committed on or after January 1, 1996.

or

[3] first degree murder when the victim was a person under 18 years of age, the defendant was at least 17 years of age at the time of the commission of the offense, and the offense was committed on or after June 1, 1996.

or

[4] the offense of sexual relations within families when the victim was a person under 18 years of age and the offense was committed on or after June 1, 1997.

or

[5] the offense of child abduction, committed by [(luring) (attempting to lure) a child under the age of 16 into a [(motor vehicle) (building) (housetrailer (dwelling place))] without the consent of the [(parent) (lawful custodian)] for other than a lawful purpose, when the offense was committed on or after January 1, 1998.

Committee Note

See 730 ILCS 150/2(B), (C), (C-5) for each possible alternative definition of sex offenses. For child abduction, only paragraph 10 is a qualifying offense; see 720 ILCS 5/10-5(10).

The standards governing whether a felony violation of a former law is "substantially equivalent" to current qualifying offenses has not been determined by Illinois case law. The Committee recommends that this is a question of law to be determined by the court rather than a factual question on which the jury should be instructed. See *People v. Guest*, 115 Ill. 2d 72, 104 Ill. Dec. 698, 503 N.E.2d 255 (1986).

Insert applicable offense(s). The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.43C Definition Of “Law Enforcement Agency Having Jurisdiction”

“Law enforcement agency having jurisdiction” means the [(Chief of Police in the municipality) (sheriff of the county [(if the sex offender intends to reside in an unincorporated area) (in the event no Police Chief exists)] in which the (sex offender) (out-of-state student) (out-of-state employee) expects to reside [(upon his discharge, parole or release) (during the service of his sentence of probation or conditional discharge)].

Committee Note

730 ILCS 150/2(D). Use applicable bracketed material.

9.43D Definition Of “Out-Of-State Student”

An “out-of-state student” is any (sex offender) (sexual predator) who is enrolled in Illinois, on a (full-time) (part-time) basis, in any (public) (private) educational institution,

Committee Note

See 730 ILCS 150/2(F).

9.43E Definition Of “Out-Of-State Employee”

An “out-of-state employee” is any (sex offender) (sexual predator) who works in Illinois, regardless of whether he receives payment for services performed, for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year.

[Persons who operate motor vehicles in Illinois accrue one day of employment time for any portion of a day spent in Illinois.]

Committee Note

730 ILCS 150/2(G).

Use applicable bracketed material.

9.43F Definition Of Failure To Register As A Sex Offender

A person commits the offense of failure to register as a sex offender when he [knowingly fails to register) (knowingly fails to report) (knowingly fails to report a change of [(residence) (address) (place of employment) (educational status)] [(willfully) (knowingly) gives material information required by law that is false] [(intentionally) (knowingly) (recklessly)] seeks to change his name].

Committee Note

730 ILCS 150/10. The statute does not include a scienter requirement for seeking a change of name. The Committee recommends that an applicable mental state be included consistent with 720 ILCS 5/4-3(b).

9.43G Duty To Register

A (sex offender) (sexual predator) (out-of-state student) (out-of-state employee) shall register in person with the [(Chief of Police of his municipality) (Chicago Police Department Headquarters) [(sheriff of his county if domiciled (in an unincorporated area) (in an incorporated area where no police chief exists)]] within 10 days

[1] of establishing (residence) (temporary domicile)]

or

[2] after entry of the sentencing order based upon the conviction

or

[3] of [(release) (discharge) (parole)] from [(confinement) (institutionalization) (imprisonment)].

or

[4] of beginning [(school) (employment)].

[A (person adjudicated to be sexually dangerous) (sexually violent person) (sexual predator) shall register for the period of his natural life]

[A sex offender shall register for a period of 10 years after [(conviction) (adjudication), if not confined to a penal institution, hospital or any other institution or facility] [(parole) (discharge) (release) from a (penal institution) (hospital) (any other institution or facility).]

Committee Note

730 ILCS 150/3; 730 ILCS 150/7.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.43H Issues In Failure To Register As A Sex Offender

To sustain the charge of failure to register as a sex offender the State must prove the following propositions:

First Proposition: That the defendant is a (sex offender) (sexual predator) [(out-of state (student) (employee))], and

Second Proposition: That the defendant
(knowingly failed to register)

or

(knowingly failed to report)

or

[(knowingly failed to report an (address) (residence) (employment) change within _____ (days) (years))]

or

(knowingly failed to report a change in (educational) (employment) status)

or

((willingly) (knowingly) gave material information required by law that is false)

or

((intentionally) (knowingly) (recklessly) sought to change his name).

If you find from your consideration of all the evidence that each of these propositions has been proven beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any of these propositions has not been proven beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

730 ILCS 150/10. The statute does not include a scienter requirement for seeking a change of name. The Committee recommends that an applicable mental state be included consistent with 720 ILCS 5/4-3(b).

9.431 Duty To Report

[A person [(adjudicated) (found) to be sexually (dangerous) (violent)], (if released) (found no longer to be sexually (dangerous) (violent) and discharged)] must report in person to the law enforcement agency with whom he last registered no later than 90 days after the date of his last registration and every 90 days thereafter.]

[A sex offender shall report in person to the law enforcement agency with whom he last registered within one year from the date of that registration and every year thereafter.]

[If a person required to register changes his [(residence) (address) (place of employment)], he shall, in writing, within 10 days inform the law enforcement agency with whom he last registered of his new (residence) (address) (place of employment) and register with the appropriate law enforcement agency within 10 days.]

[If a person required to register establishes (residence) (employment) outside of Illinois, within 10 days of establishing that (residence) (employment), he shall, in writing, inform the law enforcement agency with whom he last registered of his out-of-state (residency) (employment).]

[A person required to register shall complete, sign and return any verification letter sent by the Department of State Police within 10 days of the mailing date of the letter.]

[An out-of-state (student) (employee) must notify the agency having jurisdiction of any change in (educational) (employment) status, in writing, within 10 days of the change.]

Committee Note

730 ILCS 150/6; 730 ILCS 150/5-10, 730 ILCS 150/6-5.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of the court and counsel and should not be included in the instruction submitted to the jury.

9.44 Definition Of Custodial Sexual Misconduct (Employee)

A person commits the offense of custodial sexual misconduct when he is an employee of a [(penal system) (treatment and detention facility)] and [(intentionally) (knowingly) (recklessly)] engages in [(sexual conduct) (sexual penetration)] with a person who is in the custody of that [(penal system) (treatment and detention facility)].

The word “employee” means: [(an employee of any governmental agency of this State or any county or municipal corporation that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system or persons detained or civilly committed under the Sexually Violent Persons Commitment Act) (a contractual employee of a penal system who works in a penal institution) (a contractual employee of a treatment and detention facility or a contractual employee of the Department of Human Services who provides supervision of persons serving a term of conditional release)].

The word “custody” means: [(pretrial incarceration or detention) (incarceration or detention under a sentence or commitment to a State or local penal institution) (parole or mandatory supervised release) (electronic home detention) (probation) (detention or civil commitment either in secure care or in the community under the Sexually Violent Persons Commitment Act)].

Committee Note

720 ILCS 5/11-9.2(a), 5/11-9.2(g)(3)(i), (ii), (iii) and 5/11-9.2(g)(1) (West 2005).

Give Instruction 11.65D, defining the term “sexual conduct,” if sexual conduct is alleged.

Give Instruction 11.65E, defining the term “sexual penetration,” if sexual penetration is alleged.

Give Instruction 9.50.

Give applicable Instruction 9.45 defining the term “penal system” or 9.46 defining the term “treatment and detention facility.”

Because Section 11-9.2(a) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.45 Definition Of Penal System

The term “penal system” means a[n] [(penitentiary) (state farm) (reformatory) (prison) (jail) (house of correction) (institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses) (county shelter care or detention home)].

Committee Note

720 ILCS 5/11-9.2(g)(2) (West 2005).

See 720 ILCS 5/2-14 (West 2005) for definition of the term “penal institution.”

See 55 ILCS 75/1 *et seq.* (West 2005) for County Shelter Care and Detention Home Act.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.46 Definition Of Treatment And Detention Facility

The term “treatment and detention facility” means any Department of Human Services facility established for the detention or civil commitment of persons under the Sexually Violent Persons Commitment Act.

Committee Note

720 ILCS 5/11-9.2(g)(2.1) (West 2005).

See 725 ILCS 207/1 *et seq.* (West 2005) for Sexually Violent Persons Commitment Act.

9.47 Issues In Custodial Sexual Misconduct (Employee)

To sustain the charge of custodial sexual misconduct, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] engaged in [(sexual conduct) (sexual penetration)] with _____; and

Second Proposition: That _____ was in the custody of a [(penal system) (treatment and detention facility)] at the time of the [(sexual conduct) (sexual penetration)]; and

Third Proposition: That the defendant was an employee of that [(penal system) (treatment and detention facility)] at the time of the [(sexual conduct) (sexual penetration)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-9.2 (West 2005).

Give Instruction 9.44.

Give applicable Instruction 9.45 defining the term “penal system” or Instruction 9.46 defining the term “treatment and detention facility.”

Insert in the blanks the name of the person in custody with whom the defendant is charged with engaging in sexual conduct or sexual penetration.

Because Section 11-9.2(a) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.48 Definition Of Custodial Sexual Misconduct (Probation Officer, Supervising Officer, Surveillance Agent)

A [(probation officer) (supervising officer) (surveillance agent)] commits the offense of custodial sexual misconduct when he [(intentionally) (knowingly) (recklessly)] engages in [(sexual conduct) (sexual penetration)] with a [(probationer) (parolee) (releasee) (person serving a term of conditional release)] who is under the supervisory, disciplinary, or custodial authority of the [(officer) (agent)] so engaging in the [(sexual conduct) (sexual penetration)].

The term [(“probation officer” means any person employed in a probation or court services department) (“supervising officer” means any person employed to supervise persons placed on parole or mandatory supervised release) (“surveillance agent” means any person employed or contracted to supervise persons placed on conditional release in the community under the Sexually Violent Persons Commitment Act)].

Committee Note

720 ILCS 5/11-9.2(b) and 5/11-9.2(g)(4), (5), (6), and (7) (West 2005).

Give Instruction 11.65D, defining the term “sexual conduct,” if sexual conduct is alleged.

Give Instruction 11.65E, defining the term “sexual penetration,” if sexual penetration is alleged.

Give Instruction 9.49, defining the term “conditional release,” if the person with whom the defendant engaged in sexual conduct or sexual penetration was serving a term of conditional release.

Because Section 11-9.2(b) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.49 Definition Of Conditional Release

The term “conditional release” means a program of [(treatment and services) (vocational services) (alcohol or other drug abuse treatment)] provided to a person civilly committed and conditionally released to the community under the Sexually Violent Persons Commitment Act.

Committee Notes

720 ILCS 5/11-9.2(g)(2.2) (West 2005).

See 725 ILCS 207/40 (West 2005) for commitment and conditional release provisions of the Sexually Violent Persons Commitment Act.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.50 Issues In Custodial Sexual Misconduct (Probation Officer, Supervising Officer, Surveillance Agent)

To sustain the charge of custodial sexual misconduct, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] engaged in [(sexual conduct) (sexual penetration)] with _____; and

Second Proposition: That _____ was a [(probationer) (parolee) (releasee) (person serving a term of conditional release)] at the time of the [(sexual conduct) (sexual penetration)]; and

Third Proposition: That _____ was under the supervisory, disciplinary, or custodial authority of the defendant at the time of the [(sexual conduct) (sexual penetration)]; and

Fourth Proposition: That the defendant was a [(probation officer) (supervising officer) (surveillance agent)] at the time of the [(sexual conduct) (sexual penetration)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/11-9.2(b) (West 2005).

Give the applicable portion of Instruction 9.48 defining terms “probation officer,” “supervising officer,” or “surveillance agent.”

Give Instruction 9.49, defining the term “conditional release,” if the person with whom the defendant engaged in sexual conduct or sexual penetration was serving a term of conditional release.

Insert in the blanks the name of the person who is under the supervisory, disciplinary or custodial authority of the defendant and with whom the defendant is charged with engaging in sexual conduct or sexual penetration.

Because Section 11-9.2(b) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 2005). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.51 Affirmative Defenses To The Charge Of Custodial Sexual Misconduct

It is a defense to the charge of custodial sexual misconduct that

[1] the defendant was lawfully married to _____ before the date of custody.

[or]

[2] the defendant has no knowledge and would have no reason to believe that the person with whom he engaged in custodial sexual misconduct was a person in custody.

Committee Note

720 ILCS 5/11-9.2(f) (West 2005).

Give this instruction only when the issue is raised by the evidence. See Chapter 720 ILCS 5/3-2 and the Introduction to IPI Criminal, Chapter 24–25.00.

Give Instruction 9.52A, if the affirmative defense of marriage is asserted.

Give Instruction 9.52B, if the affirmative defense of lack of knowledge is asserted.

Insert in the blank the name of the person with whom the defendant is charged with engaging in sexual misconduct.

Use applicable bracketed paragraph.

The bracketed numbers are presented solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

9.52A Issue In Defense Of Previous Marriage

_____ *Proposition:* That the defendant was not lawfully married to
_____ before the date of custody.

Committee Note

720 ILCS 5/11-9.2(f)(1) (West 2005).

Give Instruction 9.51.

Insert in the first blank the number of the proposition.

Insert in the second blank the name of the person with whom the defendant is charged with engaging in sexual misconduct.

Give this issue as the final proposition in the issues instruction for the offense charged.

9.52B Issue In Defense Of Knowledge Of Custodial Status

_____ *Proposition:* That the defendant [(knew) (had reason to believe)] that
_____ was a person in custody.

Committee Note

720 ILCS 5/11-9.2(f) (2) (West 2005).

Give Instruction 9.51.

Insert in the first blank the number of the proposition.

Insert in the second blank the name of the person with whom the defendant is charged with engaging in sexual misconduct.

Give this issue as the final proposition in the issues instruction for the offense charged.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Chapter 10.00

ABORTION

SYNOPSIS

10.01	Definition Of Unauthorized Waiver Of Notice
10.01A	Definition Of Minor
10.01B	Definition Of Incompetent
10.01C	Definition Of Adult Family Member
10.02	Issues In Unauthorized Waiver Of Notice

10.01 Definition Of Unauthorized Waiver Of Notice

A person commits the offense of unauthorized waiver of notice when he signs a waiver of notice required before an abortion for [(a minor) (an incompetent person)] and he is not an adult family member of the [(minor) (incompetent person)].

Committee Note

Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/40(b) (West 2016).

Give Instruction 10.02.

When applicable, give Instruction 10.01A, defining the word “minor.”

When applicable, give Instruction 10.01B, defining the word “incompetent.”

When applicable, give Instruction 10.01C, defining the term “adult family member.”

10.01A Definition Of Minor

The word “minor” means any person under 18 years of age who is not or has not been married or who has not been emancipated.

Committee Note

Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/10 (West 2016).

The statute defining the term “minor” requires that the minor was emancipated under the Emancipation of Minors Act. Whether the minor was emancipated under the Emancipation of Minors Act, 750 ILCS 30/1 *et. seq.*, is a legal issue for the court to determine.

10.01B Definition Of Incompetent

The word “incompetent” means any person who [(has been adjudged as mentally ill) (is a person with developmental disabilities and who, because of her mental illness or developmental disability, is not fully able to manage her person and for whom a guardian of the person has been appointed)].

Committee Note

Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/10 (West 2016).

When the issue involves a person for whom a guardian has been appointed, the statute requires that the guardian was appointed under Section 11a-3(a)(1) of the Probate Code of 1975, (755 ILCS 5/1-1 *et. seq.*). Whether a guardian was appointed pursuant to that Act is a legal issue for the court to determine.

10.01C Definition Of Adult Family Member

The term “adult family member” means a person over 21 years of age who is the parent, grandparent, step-parent living in the household, or legal guardian.

Committee Note

Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/10 (West 2016).

10.02 Issues In Unauthorized Waiver Of Notice

To sustain the charge of unauthorized waiver of notice, the State must prove the following propositions:

First Proposition: That the defendant signed a waiver of notice for [(a minor) (an incompetent person)] who was seeking an abortion, and

Second Proposition: That the defendant was not an adult family member of the [(minor) (incompetent person)].

Committee Note

Instruction and Committee Note Approved October 28, 2016

750 ILCS 70/1 *et seq.* (West 2016).

Give Instruction 10.01.

Chapter 11.00

ASSAULT, BATTERY, AND RELATED CRIMES

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11.01 Definition Of Assault

A person commits the offense of assault when he [(knowingly) (intentionally)] [without lawful authority] engages in conduct which places another person in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)].

Committee Note

720 ILCS 5/12-1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-1 (1991)).

Give Instruction 11.02.

Use the mental state that conforms to the allegation in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Use the phrase “without lawful authority” whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable bracketed material.

11.02 Issue In Assault

To sustain the charge of assault, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally)] engaged in conduct which placed _____ in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-1 (1991)).

Give Instruction 11.01.

Use the mental state that conforms to the allegation in the charge. See *People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without lawful authority” in Instruction 11.01 (see Committee Note to Instruction 11.01), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without lawful authority, the Committee has concluded that the phrase “without lawful authority” need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.03 Definition Of Aggravated Assault

A person commits the offense of aggravated assault when, he [(intentionally) (knowingly) (recklessly)] [without lawful authority] engages in conduct which places another person in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)], and

[1] in doing so, he uses a deadly weapon.

[or]

[2] in doing so, he is hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] in doing so, he knows the individual assaulted is a teacher or other person employed in any school and such teacher or other employee is upon the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes.

[or]

[4] in doing so, he knows the individual assaulted is a supervisor, director, instructor, or other person employed in any park district, and such supervisor, director, instructor, or other employee is upon the grounds of the park or grounds adjacent thereto, or is in any part of a building used for park purposes.

[or]

[5] in doing so, he knows the individual assaulted is a [(caseworker) (investigator) (person)] employed by [(the State Department of Public Aid) (a County Department of Public Aid)] and such [(caseworker) (investigator) (person)] is

[a] upon the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which a [(public aid applicant or recipient) (person being investigated in the employee's discharge of his duties)] resides or is located.

[or]

[6] in doing so, he knows the individual assaulted is a

[a] [(peace officer) (fireman)] [(who at the time is engaged in the execution of) (and he assaults that [(officer) (fireman)] to prevent him from performing) (and he assaults that [(officer) (fireman)] in retaliation for performing)] his official duties.

[or]

[b] person summoned or directed by a peace officer [(who at the time is engaged in the execution of) (and he assaults that person to prevent that peace officer from performing) (and he assaults that person in retaliation for that person helping the peace officer perform)] his official duties.

[or]

[7] in doing so, he knows the individual assaulted is [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit] [(who at the time was engaged in the execution of) (and he assaults that individual to prevent him from performing) (and he assaults that individual in retaliation for that individual performing)] his official duties.

[or]

[8] in doing so, he knows the individual assaulted is the [(driver) (operator) (employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire and the individual assaulted is [a] then performing in such capacity.

[or]

[b] then using such public transportation as a passenger.

[or]

[c] using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location.

[or]

[9] the person he assaults is, at the time of the assault, on or about a public way, public property, or public place of accommodation or amusement.

[or]

[10] in doing so, he knows the individual assaulted is an employee of [(the State of Illinois) (a municipal corporation of the State of Illinois) (a political subdivision of the State of Illinois)] engaged in the performance of his authorized duties as such employee.

[or]

[11] the other person is physically handicapped. A physically handicapped person is a person who suffers from a permanent and disabling physical

characteristic, resulting from disease, injury, functional disorder, or congenital condition.

[or]

[12] the other person is an individual of 60 years of age or older.

[or]

[13] in doing so, he discharges a firearm.

[or]

[14] in doing so, he knows the individual assaulted is a correctional officer [(who at the time is engaged in the execution of) (and he assaults the employee to prevent him from performing) (and he assaults the employee in retaliation for performing)] his official duties.

[or]

[15] in doing so, he knows the individual assaulted is a correctional employee [(who at the time is engaged in the execution of) (and he assaults the employee to prevent him from performing) (and he assaults the employee in retaliation for performing)] his official duties.

Committee Note

720 ILCS 5/12-2 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-2 (1991)), amended by P.A. 87-921, effective January 1, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 88-467, effective July 1, 1994; and P.A. 88-670, effective December 2, 1994.

Give Instructions § 11.01 and § 11.04.

Regarding assaults committed upon emergency medical technicians (EMT) (paragraph [7] of this instruction), if the definition of EMT or the type of EMT becomes an issue, see Sections 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-paramedic, and EMT-intermediate. See 720 ILCS 5/2-6.5 (West Supp. 1993).

Regarding assaults committed upon persons over 60 years of age (paragraph [12] of this instruction) or physically handicapped (paragraph [11] of this instruction), the defendant does not have to *know* that the victim is 60 years of age or older or physically handicapped in order to be convicted of aggravated assault under Sections 12-2(a)(11) and (a)(12). See *People v. White*, 241 Ill. App. 3d 291, 302, 181 Ill. Dec. 746, 755, 608 N.E.2d 1220, 1229 (2d Dist. 1993).

Because Section 12-2 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (But see *People v. Gean*, 143 Ill. 2d 281, 158 Ill.

Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use the phrase “without lawful authority” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961. See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.04 Issues In Aggravated Assault

To sustain the charge of aggravated assault, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] placed _____ in reasonable apprehension of receiving [(bodily harm) (physical contact of an insulting or provoking nature)]; and

[1] *Second Proposition:* That the defendant used a deadly weapon.

[or]

[2] *Second Proposition:* That the defendant was hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] *Second Proposition:* That the defendant knew _____ to be a teacher or other person employed in a school; and

Third Proposition: _____ was on the grounds of the school or grounds adjacent to the school, or in any part of a building used for school purposes.

[or]

[4] *Second Proposition:* That the defendant knew _____ to be a supervisor, director, instructor, or other person employed in any park district; and

Third Proposition: That _____ was upon the grounds of the park or grounds adjacent to the park, or in any part of a building used for park purposes.

[or]

[5] *Second Proposition:* That the defendant knew _____ to be a [(caseworker) (investigator) (person)] employed by [(the State Department of Public Aid) (a County Department of Public Aid)]; and

[a] *Third Proposition:* That _____ was upon the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] *Third Proposition:* That _____ was in any part of a building used for public aid purposes.

[or]

[c] *Third Proposition:* That _____ was on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] *Third Proposition:* That _____ was on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or

investigated in the employee's discharge of his duties)].

[or]

[e] *Third Proposition:* That _____ was in any part of a building in which a [(public aid applicant or recipient) (person being investigated in the employee's discharge of his duties)] resided or was located.

[or]

[6] *Second Proposition:* That the defendant knew _____ to be a [(peace officer) (fireman) (person summoned or directed by a peace officer)]; and

[a] *Third Proposition:* That the defendant [(knew that _____ was engaged in the execution of) (assaulted _____ to prevent him from performing) (assaulted _____ in retaliation for his performing)] his official duties.

[or]

[b] *Third Proposition:* That the defendant assaulted that person [(while the peace officer was engaged in the execution of) (to prevent the peace officer from performing) (to retaliate for that person helping the peace officer perform)] his official duties.

[or]

[7] *Second Proposition:* That the defendant knew _____ to be [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)]; and

Third Proposition: That the defendant [(knew that _____ was engaged in the execution of) (assaulted _____ to prevent him from performing) (assaulted _____ in retaliation for his performing)] his official duties.

[or]

[8] *Second Proposition:* That the defendant knew _____ to be [(a driver) (an operator) (an employee) (a passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire; and

[a] *Third Proposition:* _____ was then performing in such capacity.

[or]

[b] *Third Proposition:* _____ was then using such public transportation as a passenger.

[or]

[c] *Third Proposition:* _____ was using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location.

[or]

[9] *Second Proposition:* That when the defendant did so, _____ was on

or about a public way, public property, or public place of accommodation or amusement.

[or]

[10] *Second Proposition:* That the defendant knew _____ to be an employee of [(the State of Illinois) (a municipal corporation of the State of Illinois) (a political subdivision of the State of Illinois)] engaged in the performance of his authorized duties as such employee.

[or]

[11] *Second Proposition:* That at the time the defendant did so, _____ was a physically handicapped person.

[or]

[12] *Second Proposition:* That at the time the defendant did so, _____ was 60 years of age or older.

[or]

[13] *Second Proposition:* That in doing so, the defendant discharged a firearm.

[or]

[14] *Second Proposition:* That the defendant knew _____ to be a correctional officer; and

Third Proposition: That the defendant [(knew that _____ was engaged in the execution of) (assaulted _____ to prevent him from performing) (assaulted _____ in retaliation for his performing)] his official duties.

[or]

[15] *Second Proposition:* That the defendant knew _____ to be a correctional employee; and

Third Proposition: That the defendant [(knew that _____ was engaged in the execution of) (assaulted _____ to prevent him from performing) (assaulted _____ in retaliation for his performing)] his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-2 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-2 (1991)), amended by P.A. 87-921, effective January 1, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 88-467, effective July 1, 1994; and P.A. 88-670, effective December 2, 1994.

Give Instruction 11.03.

Use the applicable alternative for the second proposition or second and third propositions.

Because Section 12-2 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982), for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without lawful authority” in Instruction 11.03 (see Committee Note to Instruction 11.03), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without lawful authority, the Committee has concluded that the phrase “without lawful authority” need not be used in this issues instruction.

Insert in the blank the name of the victim.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 11.03. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.05 Definition Of Battery

A person commits the offense of battery when he [(intentionally) (knowingly)] [without legal justification] and by any means [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person.

Committee Note

720 ILCS 5/12-3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-3 (1991)).

Give Instruction 11.06.

Use the mental state that conforms to the allegations in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable bracketed material.

11.06 Issue In Battery

To sustain the charge of battery, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally)] [(caused bodily harm to) (made physical contact of an insulting or provoking nature with)] _____.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-3 (1991)).

Give Instruction 11.05.

Use the mental state that conforms to the allegation in the charge. See *People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.05 (see Committee Note to Instruction 11.05), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.07 Definition Of Battery Of An Unborn Child

A person, not the pregnant mother of the unborn child, commits the offense of battery of an unborn child when he [(knowingly) (intentionally)] [without legal justification] and by any means causes bodily harm to an unborn child.

Committee Note

720 ILCS 5/12-3.1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-3.1 (1991)).

Give Instructions 11.07A and 11.08.

Use the mental state that conforms to the allegation in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child. The statute does not apply to acts committed during an abortion, as authorized by Chapter 720, Section 81-21 *et seq.*, or to acts committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment. It will be necessary to give additional instructions if the defendant relies upon either of those exceptions.

Use applicable bracketed material.

11.07A Definition Of Unborn Child

The term “unborn child” means any individual of the human species from fertilization until birth.

Committee Note

720 ILCS 5/12-3.1(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-3.1(b) (1991)).

This definition applies for charges brought under Section 12-3.1, which is battery of an unborn child.

See Instruction 11.07.

11.08 Issues In Battery Of An Unborn Child

To sustain the charge of battery of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally)] caused bodily harm to an unborn child; and

Second Proposition: That the defendant was not the pregnant mother of the unborn child.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3.1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-3.1 (1991)).

Give Instruction 11.07.

Use the mental state that conforms to the allegation in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.07 (see Committee Note to Instruction 11.07), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction.

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child, and additional instructions must be given when the defendant relies upon one of those exceptions. See Committee Note to Instruction 11.07.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.09 Definition Of Aggravated Battery Of An Unborn Child

A person, not the pregnant mother of the unborn child, commits the offense of aggravated battery of an unborn child when he [(intentionally) (knowingly)] [without legal justification] and by any means causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to an unborn child.

Committee Note

720 ILCS 5/12-4.4 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.4 (1991)).

Give Instructions 11.07, 11.07A, and 11.10.

Use the mental state that conforms to the allegation in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child, and additional instructions must be given when the defendant relies upon one of those exceptions. See Committee Note to Instruction 11.07.

Use applicable bracketed material.

11.10 Issues In Aggravated Battery Of An Unborn Child

To sustain the charge of aggravated battery of an unborn child, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to an unborn child; and

Second Proposition: That the defendant was not the pregnant mother of the unborn child.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.4 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.4 (1991)).

Give Instruction 11.09.

Use the mental state that conforms to the allegation in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.09 (see Committee Note to Instruction 11.09), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Since the additional proposition or propositions that will thereby be without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction.

Section 12-3.1(d) sets forth exceptions to the offense of battery of an unborn child, and additional instructions must be given when the defendant relies upon one of those exceptions. See Committee Note to Instruction 11.07.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.11 Definition Of Domestic Battery

A person commits the offense of domestic battery when he [(intentionally) (knowingly)] [without legal justification] and by any means [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] any family or household member.

Committee Note

720 ILCS 5/12-3.2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-3.2 (1991)).

Give Instruction 11.12.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 720.

Use applicable bracketed material.

11.11A Definition Of Family Or Household Member—Domestic Battery

The phrase “family or household member” means [(spouses) (former spouses) (parents) (children) (stepchildren) (persons related by blood or marriage) (persons who share or formerly shared a common dwelling) (persons who [allegedly] have a child in common) (persons who [allegedly] share a blood relationship through a child) (persons who have or have had a dating or engagement relationship) (persons with disabilities and their personal assistants)].

Committee Note

725 ILCS 5/112A-3(3), amended by P.A. 87-1186, effective Jan. 1, 1993.

11.12 Issues In Domestic Battery

To sustain the charge of domestic battery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] [(caused bodily harm to) (made physical contact of an insulting or provoking nature with)] _____; and

Second Proposition: That _____ was then a family or household member to the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3.2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-3.2 (1991)).

Give Instructions 11.11 and 11.11A.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.11 (see Committee Note to Instruction 11.11), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.13 Definition Of Aggravated Battery—Great Bodily Harm—As Of July 1, 2011

A person commits the offense of aggravated battery when he [(intentionally) (knowingly)] [without legal justification] and by any means causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to another person.

Committee Note

Instruction and Committee Note Approved April 26, 2016

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/12-4(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4(a) (1991)).

Give Instruction 11.14.

Use the mental state that conforms to the allegations in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable bracketed material.

11.14 Issue In Aggravated Battery—Great Bodily Harm—As Of July 1, 2011

To sustain the charge of aggravated battery, the State must prove the following proposition:

That the defendant [(intentionally) (knowingly)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to _____.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note*Instruction and Committee Note Approved April 26, 2016*

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/12-4(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4(a) (1991)).

Give Instruction 11.13.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.13 (see Committee Note to Instruction 11.13), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.15 Definition Of Aggravated Battery—While Armed, Hooded, Or Involving Specific Categories Of Victims—As Of July 1, 2011

A person commits the offense of aggravated battery when he [(intentionally) (knowingly)] [without legal justification] and by any means [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] in doing so, he uses a deadly weapon other than by the discharge of a firearm.

[or]

[2] in doing so, he is hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] in doing, so, he knows the individual harmed is a teacher or other person employed in any school and such teacher or other employee is on the grounds of a school or grounds adjacent thereto, or is in any part of a building used for school purposes.

[or]

[4] in doing so, he knows the individual harmed is a supervisor, director, instructor, or other person employed in any park district, and such supervisor, director, instructor, or other employee is on the grounds of the park or grounds adjacent thereto, or in any part of a building used for park purposes.

[or]

[5] in doing so, he knows the individual harmed to be a caseworker, investigator, or other person employed by the State Department of Public Aid or a County Department of Public Aid and such caseworker, investigator, or other person is

[a] on the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which the applicant, recipient, or other person resides or is located.

[or]

[6] in doing so, he knows the individual harmed is a

[a] [(peace officer) (correctional institution employee) (fireman)] [(who at the time is engaged in the execution of) (and he harms that [(officer) (fireman)] to prevent the [(officer) (fireman)] from performing) (and he harms that [(officer) (fireman)] in retaliation for performing)] official duties.

[or]

[b] person summoned or directed by a peace officer [(who at the time is engaged in the execution of) (and he harms that person to prevent the peace officer from performing) (and he harms that person in retaliation for that person helping the peace officer perform)] official duties.

[or]

[7] in doing so, he knows the individual harmed is [(an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] employed by a municipality [or other governmental unit] [(who at the time is engaged in the performance of his) (and he harms that individual to prevent the individual from performing) (and he harms that individual in retaliation for that individual performing)] official duties.

[or]

[8a] in doing so, he is on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[8b] at the time he does so, the other person is on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[9] in doing so, he knows the individual harmed is the [(driver) (operator) (employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire and the individual harmed is [(then performing in such capacity) (then using such public transportation as a passenger) (using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location)].

[or]

[10] the other person is an individual of 60 years of age or older.

[or]

[11] in doing so, he knows the individual harmed is pregnant.

[or]

[12] in doing so, he knows the individual harmed to be a judge whom he intended to harm as a result of the judge's performance of his official duties as a judge.

[or]

[13] in doing so, he knows the individual harmed to be an employee of the Illinois Department of Children and Family Services who at the time was engaged in the performance of his authorized duties.

[or]

[14] in doing so, he knows the individual harmed to be a person who is physically handicapped. A physically handicapped person is a person who suffers from a permanent and disabling physical characteristic, resulting from disease, injury, functional disorder, or congenital condition.

[or]

[15] in doing so, he knowingly and without legal justification and by any means causes bodily harm to a merchant who detains the person for an alleged commission of retail theft. A merchant is an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of such owner or operator.

Committee Note

Instruction and Committee Note Approved April 26, 2016

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/124(b) (West 1992) (formerly Ill. Rev. Stat. ch. § 12-4(b) (1991)), amended by P.A. 86-979 and P.A. 86-980, effective July 1, 1990; P.A. 87-921, effective January 1, 1993; P.A. 88-45, effective July 6, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 90-115, effective January 1, 1998.

Give Instruction 11.16.

In *People v. Hale*, 77 Ill. 2d 114, 32 Ill. Dec. 548, 395 N.E.2d 929 (1979), the Illinois Supreme Court held that a charge of aggravated battery can rest upon either of the two methods of committing a battery (i.e., causing bodily harm or making physical contact of an insulting or provoking nature) when the offense is aggravated because of the identity of the victim. 720 ILCS 5/12-4(b)(3) through (12). The supreme court did not specifically address what conduct must be proved when the offense is aggravated by the fact that the defendant used a deadly weapon or was hooded, robed, or masked. 720 ILCS 5/12-4(b)(1) and (2). However, the wording of the statute would appear to mandate the same result as that reached in *Hale* for such charges, and this instruction has, therefore, been drafted to allow either alternative to be used for any of the aggravating factors. Use the alternative that conforms to the allegation in the charge. See *People v. Lutz*, 73 Ill. 2d 204, 383 N.E.2d 171 (1978).

Regarding offenses committed upon emergency medical technicians (EMT) (paragraph [7] of this instruction), if the definition of EMT or the type of EMT

becomes an issue, see Sections 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-paramedic, and EMT intermediate. See 720 ILCS 5/26.5 (West Supp. 1993).

The Committee would caution that the specific wording of the provision regarding batteries committed upon persons over 60 years of age (Section 12-4(b)(10), paragraph [10] in this instruction), differs from that employed in any of the other provisions. Although no court has yet addressed the issue, the Committee believes that when paragraph [10] is used, the alternative involving contact of an insulting or provoking nature should not be used.

Also regarding batteries committed upon persons over 60 years of age (paragraph [10] of this instruction), the defendant does not have to *know* that the victim is 60 years of age or older in order to be convicted of aggravated battery under Section 12-4(b)(10). See *People v. White*, 241 Ill. App. 3d 291, 302, 181 Ill. Dec. 746, 755, 608 N.E.2d 1220, 1229 (2d Dist. 1993).

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961. See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

The definition of aggravated battery under Section 12-4(b) has grown over the last several years due to the inclusion by the legislature of additional designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the allegedly criminal behavior occurred.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.16 Issues In Aggravated Battery—While Armed, Hooded, Or Involving Specific Categories Of Victims—As Of July 1, 2011

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] [(caused bodily harm to _____) (made physical contact of an insulting or provoking nature with _____)]; and

[1] *Second Proposition:* That the defendant used a deadly weapon other than by the discharge of a firearm.

[or]

[2] *Second Proposition:* That the defendant was hooded, robed, or masked in such a manner as to conceal his identity.

[or]

[3] *Second Proposition:* That the defendant knew _____ to be a teacher or other person employed in a school; and

Third Proposition: That _____ was on the grounds of a school or grounds adjacent to a school, or in any part of a building used for school purposes.

[or]

[4] *Second Proposition:* That the defendant knew _____ to be a supervisor, director, instructor, or other person employed in a park district; and

Third Proposition: That _____ was on the grounds of the park, or on grounds adjacent to the park, or in any part of a building used for park purposes.

[or]

[5] *Second Proposition:* That the defendant knew _____ to be a caseworker, investigator, or other person employed by the State Department of Public Aid or a County Department of Public Aid; and

Third Proposition: That _____ was

[a] on the grounds of a public aid office or grounds adjacent to a public aid office.

[or]

[b] in any part of a building used for public aid purposes.

[or]

[c] on the grounds of the home of a [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)]

[or]

[d] on grounds adjacent to the home of the [(public aid applicant or recipient) (person being interviewed or investigated in the employee's discharge of his duties)].

[or]

[e] in any part of a building in which the applicant, recipient, or other such person resides or is located.

[or]

[6] *Second Proposition*: That the defendant knew _____ to be a [(peace officer) (correctional institution employee) (fireman) (person summoned or directed by a peace officer)]; and

[a] *Third Proposition*: That the defendant [(knew that _____ was engaged in the execution of) (harmed _____ to prevent him from performing) (harmed _____ in retaliation for his performing)] official duties.

[or]

[b] *Third Proposition*: That the defendant harmed that person [(while the peace officer was engaged in the execution of) (to prevent the peace officer from performing) (to retaliate for that person helping the peace officer perform)] official duties.

[or]

[7] *Second Proposition*: That the defendant knew _____ to be [(an emergency medical technician) (and ambulance driver) (a medical assistant) (a first aid attendant)]; and

Third Proposition: That the defendant [(knew that _____ was engaged in the performance of his) (harmed _____ to prevent him from performing) (harmed _____ in retaliation for his performing)] official duties.

[or]

[8a] *Second Proposition*: That the defendant did so while on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[8b] *Second Proposition*: That when the defendant did so, _____ was on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement)].

[or]

[9] *Second Proposition*: That the defendant knew _____ to be the [(driver) (operator)(employee) (passenger)] of any transportation facility or system engaged in the business of transportation of the public for hire; and

Third Proposition: That _____ was [(then performing in such capacity) (then using such public transportation as a passenger) (then using any area of any description designated by the transportation facility or system as a vehicle boarding, departure, or transfer location)].

[or]

[10] *Second Proposition:* That at the time defendant did so, _____ was an individual of 60 years of age or older.

[or]

[11] *Second Proposition:* That the defendant knew _____ to be pregnant.

[or]

[12] *Second Proposition:* That the defendant knew _____ to be a judge whom he intended to harm as a result of the judge's performance of his or her official duties as a judge.

[or]

[13] *Second Proposition:* That the defendant knew _____ to be an employee of the Illinois Department of Children and Family Services engaged in the performance of his or her official duties as such an employee.

[or]

[14] *Second Proposition:* That the defendant knew _____ to be a person who was physically handicapped.

[or]

[15] *Second Proposition:* That the defendant knew _____ to be a merchant who was detaining the defendant for an alleged commission of retail theft.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 26, 2016

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of "Aggravated Battery" which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of "Aggravated Battery" which was committed on or after July 1, 2011.

720 ILCS 5/12-4(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-4(b) (1991)), amended by P.A. 86-979 and P.A. 86-980, effective July 1, 1990; P.A. 87-921, effective January 1, 1993; P.A. 88-45, effective July 6, 1993; P.A. 88-433, effective January 1, 1994; and P.A. 90-115, effective January 1, 1998.

Give Instruction 11.15.

See Committee Note to Instruction 11.15, concerning selection of the appropriate

alternative method of committing a battery.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.15 (see Committee Note to Instruction 11.15), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00.

Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction.

Insert in the blank(s) the name of the victim.

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 11.15. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.17 Definition Of Aggravated Battery—Administering Dangerous Substance—As Of July 1, 2011

A person commits the offense of aggravated battery when he, for other than medical purposes [(administers to an individual) (causes an individual to take)] [(without the individual's consent) (by threat) (by deception)] any [(intoxicating) (poisonous) (stupefying) (narcotic) (anesthetic)] substance.

Committee Note*Instruction and Committee Note Approved April 26, 2016*

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of "Aggravated Battery" which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of "Aggravated Battery" which was committed on or after July 1, 2011.

720 ILCS. 5/12-4(c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4(c) (1991)).

Give Instruction 11.18.

Use applicable bracketed material.

11.18 Issues In Aggravated Battery—Administering Dangerous Substance—As Of July 1, 2011

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant [(administered to _____) (caused _____ to take)] an [(intoxicating) (poisonous) (stupefying) (narcotic) (anesthetic)] substance; and

Second Proposition: That _____ [(did not consent) (was threatened by the defendant) (was deceived by the defendant)]; and

Third Proposition: That the defendant acted for other than medical purposes.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 26, 2016

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/12-4(c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4(c) (1991)).

Give Instruction 11.17.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.19 Definition Of Aggravated Battery—Food Containing Foreign Substance Or Object—As Of July 1, 2011

A person commits the offense of aggravated battery when he knowingly gives to another person any food that contains any [(substance) (object)] that is intended to cause physical injury if eaten.

Committee Note

Instruction and Committee Note Approved April 26, 2016

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/12-4(d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4(d) (1991)).

Give Instruction 11.20.

Use applicable bracketed material.

11.20 Issues In Aggravated Battery—Food Containing Foreign Substance Or Object—As Of July 1, 2011

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly gave food to another person; and

Second Proposition: That the food contained any [(substance) (object)] that was intended to cause physical injury if eaten; and

Third Proposition: That the defendant knew the food contained such [(a substance) (an object)].

If you find from your consideration of all the evidence that the State has proved each one of these propositions beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved any one of these propositions beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note*Instruction and Committee Note Approved April 26, 2016*

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/12-4(d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4(d) (1991)).

Give Instruction 11.19.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.21 Definition Of Heinous Battery—As Of July 1, 2011

A person commits the offense of heinous battery when he knowingly [without legal justification] causes severe and permanent [(disability) (disfigurement)] to another person by means of a [(caustic) (flammable)] substance.

Committee Note*Instruction and Committee Note Approved April 26, 2016*

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/12-4.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-4.1 (1991)), amended by P.A. 88-285, effective January 1, 1994.

Give Instruction 11.22.

Use applicable bracketed material.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

11.22 Issues In Heinous Battery—As Of July 1, 2011

To sustain a charge of heinous battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly caused severe and permanent [(disability) (disfigurement)] to _____; and

Second Proposition: That the defendant did so by means of a [(caustic) (flammable)] substance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note*Instruction and Committee Note Approved April 26, 2016*

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/12-4.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-4.1 (1991)), amended by P.A. 88-285, effective January 1, 1994.

Give Instruction 11.21.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.21 (see Committee Note to Instruction 11.21), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.23 Definition Of Aggravated Battery With A Firearm—As Of July 1, 2011

A person commits the offense of aggravated battery with a firearm when he, by means of discharging a firearm, [(intentionally) (knowingly)] causes injury to

[1] another person.

[or]

[2] a person he knows to be [(a peace officer) (a person summoned by a peace officer) (a correctional institution employee) (a fireman) (an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)] [employed by a municipality [or other governmental unit]]

[a] while the [(officer) (employee) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] is engaged in the execution of his official duties.

[or]

[b] to prevent the [(officer) (employee) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] from performing his official duties.

[or]

[c] in retaliation for the [(officer) (employee) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] performing his official duties.

Committee Note*Instruction and Committee Note Approved April 26, 2016*

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/12-4.2 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-4.2 (1991)), added by P.A. 86-980, effective July 1, 1990; amended by P.A. 87-921, effective January 1, 1993; P.A. 87-1256, effective July 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instructions 11.23A and 11.24.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Regarding offenses committed upon emergency medical technicians (EMT) (paragraph [2]), if the definition of EMT or the type of EMT becomes an issue, see Sections 4.12, 4.13, or 4.15 of the Emergency Medical Services System Act (210 ILCS 50/4.12, 4.13, or 4.15 (West 1992)) which define EMT-ambulance, EMT-

paramedic, and EMT-intermediate. *See* 720 ILCS 5/2-6.5 (West Supp. 1993).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.23A Definition Of Firearm—Aggravated Battery With A Firearm

The word “firearm” means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas.

[However, this word does not include _____.]

Committee Note

720 ILCS 5/83-1.1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 83-1.1 (1991)).

The statutory definition on which this instruction is based contains several exclusions, such as a spring-gun, a B-B gun, etc. In the event the case on trial presents a jury issue on the applicability of any of these exclusions, the bracketed second paragraph should be given with the particular device at issue inserted in the blank.

11.24 Issues In Aggravated Battery With A Firearm—As Of July 1, 2011

To sustain the charge of aggravated battery with a firearm, the State must prove the following propositions:

[1] *First Proposition:* That the defendant [(intentionally) (knowingly)] caused injury to another person; and

Second Proposition: That the defendant did so by discharging a firearm.

[or]

[2] *First Proposition:* That the defendant [(intentionally) (knowingly)] caused injury to another person; and

Second Proposition: That the defendant did so by discharging a firearm; and

Third Proposition: That the defendant knew that the other person was [(a peace officer) (a person summoned by a peace officer) (a correctional institution employee) (a fireman) (an emergency medical technician) (an ambulance driver) (a medical assistant) (a first aid attendant)]; and

Fourth Proposition: That the defendant did so

[a] while the [(peace officer) (correctional officer) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] was engaged in the execution of his official duties.

[or]

[b] to prevent the [(peace officer) (correctional officer) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] from performing his official duties.

[or]

[c] in retaliation for the [(peace officer) (correctional officer) (fireman) (emergency medical technician) (ambulance driver) (medical assistant) (first aid attendant)] performing his official duties.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 26, 2016

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction

for the charge of “Aggravated Battery” which was committed on or after July 1, 2011,

720 ILCS 5/12-4.2 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-4.2 (1991)), added by P.A. 86-980, effective July 1, 1990; amended by P.A. 87-921, effective January 1, 1993; P.A. 87-1256, effective July 1, 1993; and P.A. 88-433, effective January 1, 1994.

Give Instruction 11.23.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction, although it does need to be included in Instruction 11.23 (see the Committee Note to Instruction 11.23).

The bracketed numbers in this instruction correspond with the bracketed numbers in Instruction 11.23. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.25 Definition Of Aggravated Battery Of A Child [Or Institutionalized Mentally Retarded Person]—As Of July 1, 2011

A person commits the offense of aggravated battery of a child when he, being a person of the age of 18 years or more, [(intentionally) (knowingly)] [without legal justification] by any means, causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to [(any child under the age of 13 years) (any institutionalized severely or profoundly mentally retarded person)].

Committee Note*Instruction and Committee Note Approved April 26, 2016*

The Aggravated Battery statute was amended effective July 1, 2001. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Aggravated Battery” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury Instruction in that series. Do not use this Instruction for the charge of “Aggravated Battery” which was committed on or after July 1, 2011.

720 ILCS 5/12-4.3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.3 (1991)).

Give Instruction 11.26.

P.A. 85-1392, effective January 1, 1989, amended Section 12-4.3 to include aggravated battery of an institutionalized severely or profoundly mentally retarded person. See also P.A. 85-1440. The offense is still entitled “aggravated battery of a child,” and the Committee retained that designation in the body of this instruction. The bracketed reference to “institutionalized mentally retarded person” was included in the title to this instruction to facilitate identification of the appropriate instruction.

Give Instruction 11.65G when the alleged victim is an institutionalized severely or profoundly mentally retarded person.

Use the mental state that conforms to the allegation in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 720. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable bracketed material.

11.26 Issues In Aggravated Battery Of A Child [Or Institutionalized Mentally Retarded Person]

To sustain the charge of aggravated battery of a child, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to _____; and

Second Proposition: That when the defendant did so, he was of the age of 18 years or older; and

Third Proposition: That when the defendant did so, _____ was under 13 years.

[or]

Third Proposition: That _____ was an institutionalized severely or profoundly mentally retarded person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.3 (1991)).

Give Instruction 11.25.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.25 (see Committee Note to Instruction 11.25), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.27 Definition Of Cruelty To Children

A person commits the offense of cruelty to children when he

[1] wilfully and unnecessarily exposes to the inclemency of the weather any [(child) (apprentice) (person)] under his legal control.

[or]

[2] [(knowingly) (intentionally) (recklessly)] injures the health or limb of a [(child) (apprentice) (person)] under his legal control.

Committee Note

720 ILCS 115/53 (West 1999) (formerly Ill. Rev. Stat. ch. 23, § 2368 (1991)).

Give Instruction 11.28.

The second alternative method of violating the statute excludes wilful and unnecessary exposure “to the inclemency of the weather.” Since the second alternative does not contain a mental state, this instruction incorporates the requirements of Chapter 38, Section 4-3. *See People v. Smith*, 60 Ill. App. 3d 403, 17 Ill. Dec. 641, 376 N.E.2d 787 (4th Dist. 1978). *But see People v. Miller*, 116 Ill. App. 3d 361, 72 Ill. Dec. 266, 452 N.E.2d 391 (2d Dist. 1983), where the Court held the cruelty statute applies only to conduct committed with the mental state of wilfulness and does not apply to recklessness.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.28 Issue In Cruelty To Children

To sustain the charge of cruelty to children, the State must prove the following proposition:

That the defendant wilfully and unnecessarily exposes to the inclemency of the weather _____, a[n] [(child) (apprentice) (person)] under his legal control.

[or]

That the defendant [(knowingly) (intentionally) (recklessly)] injured the [(health) (limb)] of a[n] [(child) (apprentice) (person)] under his legal control.

If you find from your consideration of all the evidence that the State has proved this proposition beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved this proposition beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 115/53 (West 1999) (formerly Ill. Rev. Stat. ch. 23, § 2368 (1991)).

Give Instruction 11.27.

The mental states referred to in Chapter 720, Section 4-3, have been added to the second alternative proposition. *See People v. Smith*, 60 Ill. App. 3d 403, 17 Ill. Dec. 641, 376 N.E.2d 787 (4th Dist. 1978). *But see People v. Miller*, 116 Ill. App. 3d 361, 72 Ill. Dec. 266, 452 N.E.2d 391 (2d Dist. 1983). Give the mental state that conforms with the charge.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.29 Definition Of Endangering The Life Or Health Of A Child

A person commits the offense of endangering the life or health of a child when he knowingly [(causes) (permits)] [(the (life) (health) of a child under the age of eighteen to be endangered) (a child under the age of eighteen to be placed in circumstances that endanger the child's (life) (health))].

Committee Note

720 ILCS 5/12C-5(a) (West 2021) (formerly 720 ILCS 150/4 and 720 ILCS 5/12-21.6).

Give Instruction 11.30.

When applicable, give Instruction 11.29A.

Use applicable bracketed material.

The Endangering Life Or Health Of A Child statute states that it is not a violation of this section for a person to relinquish a child in accordance with the Abandoned Newborn Infant Protection Act. (325 ILCS 2/1 *et seq.*). This determination is a matter of law for the court.

**11.29A Inference In Endangering The Life Or Health Of A
Child—Unattended In Motor Vehicle**

You may infer that a child six years of age or younger is unattended if that child is left in a motor vehicle for more than ten minutes. Unattended means either not accompanied by a person fourteen years of age or older, or, if accompanied by a person fourteen years of age or older, out of sight of that person.

You are never required to make this inference. It is for the jury to determine whether the inference should be made. You should consider all of the evidence in determining whether to make this inference.

Committee Note

720 ILCS 5/12C-5(b), (c) (West 2021).

The Committee notes that this inference is permissive, not mandatory. *People v Pomykala*, 203 Ill. 2d 198, 784 N.E.2d 784 (2003); *People v Funches*, 212 Ill. 2d 334, 818 N.E.2d 342 (2004). Mandatory presumptions are unconstitutional in criminal cases. *People v Watts*, 181 Ill. 2d. 133, 692 N.E.2d 315 (1998). Accordingly, the Committee drafted the second paragraph of this instruction.

11.29B Definition Of Endangering The Life Or Health Of A Child—Felony

A person commits the offense of endangering the life or health of a child when he knowingly [(causes) (permits)] [(the (life) (health) of a child under the age of eighteen to be endangered) (a child under the age of eighteen to be placed in circumstances that endanger the child's (life) (health))] and in doing so was a proximate cause of the child's death.

Committee Note

720 ILCS 5/12C-5(d) (West 2022) (formerly 720 ILCS 150/4 and 720 ILCS 5/12-21.6).

Give Instruction 11.30B.

Give Instruction 4.24, defining the term "proximate cause."

When applicable, give Instruction 11.29A.

Use applicable bracketed material.

The Endangering Life Or Health Of A Child statute provides that it is not a violation of this section for a person to relinquish a child in accordance with the Abandoned Newborn Infant Protection Act. (325 ILCS 2/1 *et seq.*). This determination is a matter of law for the court.

11.30 Issues In Endangering The Life Or Health Of A Child

To sustain the charge of endangering the life or health of a child, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(caused) (permitted)] [(the (life) (health) of _____ to be endangered) (_____ to be placed in circumstances that endangered the (life) (health) of _____)]; and

Second Proposition: That at the time the defendant did so, _____ was a child under the age of eighteen.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12C-5(a) (West 2021) (formerly 720 ILCS 150/4 and 720 ILCS 5/12-21.6).

Give Instruction 11.29.

Insert the name of the child in the blanks.

When applicable, give Instruction 11.29A.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.30B Issues In Endangering The Life Or Health Of A Child—Felony

To sustain the charge of endangering the life or health of a child, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(caused) (permitted)] [(the (life) (health) of _____ to be endangered) (_____ to be placed in circumstances that endangered the (life) (health) of _____)]; and

Second Proposition: That at the time the defendant did so, _____ was a child under the age of eighteen; and

Third Proposition: That the defendant proximately caused the death of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12C-5(d) (West 2022) (formerly 720 ILCS 150/4 and 720 ILCS 5/12-21.6).

Give Instruction 11.29B.

Insert the name of the child in the blanks.

When applicable, give Instruction 11.29A.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.31 Definition Of Tampering With Food, Drugs, Or Cosmetics

A person commits the offense of tampering with food, drugs, or cosmetics when he knowingly puts any substance capable of causing death or great bodily harm to a human being into any food, drug, or cosmetic offered for sale or consumption.

Committee Note

720 ILCS 5/12-4.5 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.5 (1991)).

Give Instruction 11.32.

11.32 Issues In Tampering With Food, Drugs, Or Cosmetics

To sustain the charge of tampering with food, drugs, or cosmetics, the State must prove the following propositions:

First Proposition: That the defendant knowingly put a substance into a [(food) (drug) (cosmetic)] offered for sale or consumption; and

Second Proposition: That the substance was capable of causing death or great bodily harm to a human being; and

Third Proposition: That the defendant knew the substance was capable of causing death or great bodily harm to a human being.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.5 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.5 (1991)).

Give Instruction 11.31.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.33 Definition Of Aggravated Battery Of A Senior Citizen

A person commits the offense of aggravated battery of a senior citizen when he [(intentionally) (knowingly)] [without legal justification] and by any means causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to an individual of 60 years of age or older.

Committee Note

720 ILCS 5/12-4.6 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.6 (1991)).

Give Instruction 11.34.

Use the mental state that conforms to the allegations in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of Chapter 38. *See People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable bracketed material.

11.34 Issues In Aggravated Battery Of A Senior Citizen

To sustain the charge of aggravated battery of a senior citizen, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly)] caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to _____; and

Second Proposition: That when the defendant did so, _____ was an individual of 60 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.6 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.6 (1991)).

Give Instruction 11.33.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.33 (see Committee Note to Instruction 11.33), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this instruction.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.35 Definition Of Drug Induced Infliction Of Great Bodily Harm

A person commits the offense of drug induced infliction of great bodily harm when he knowingly delivers a controlled substance to another and any person experiences [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of any amount of that controlled substance.

Committee Note

720 ILCS 5/12-4.6 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.6 (1991)).

Give Instruction 11.36, and Instruction 17.10, defining the offense of delivery of a controlled substance.

Use applicable bracketed material.

11.36 Issues In Drug Induced Infliction Of Great Bodily Harm

To sustain the charge of drug induced infliction of great bodily harm, the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered a controlled substance; and

Second Proposition: That any person experienced [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of the controlled substance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-4.6 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-4.6 (1991)).

Give Instruction 11.35.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.37 Definition Of Reckless Conduct

A person commits the offense of reckless conduct when he recklessly performs any act which [(causes bodily harm to) (endangers the bodily safety of)] another person.

Committee Note

720 ILCS 5/12-5 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-5 (1991)).

Give Instruction 11.38.

Give Instruction 5.01, defining the word "recklessness."

Use applicable bracketed material.

11.38 Issue In Reckless Conduct

To sustain the charge of reckless conduct, the State must prove the following proposition:

That the defendant recklessly performed an act which [(caused bodily harm to _____) (endangered the bodily safety of _____)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-5 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-5 (1991)).

Give Instruction 11.37.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.39 Definition Of Criminal Housing Management

A person commits the offense of criminal housing management when he, having [(personal management) (control)] of residential real estate, as a [(legal owner) (equitable owner) (managing agent)] of the residential real estate, knowingly permits by his gross [(carelessness) (neglect)] the [(physical condition) (facilities)] of the residential real estate to become or remain so deteriorated that the [(health) (safety)] of any inhabitant is endangered.

Committee Note

720 ILCS 5/12-5.1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-5.1 (1991)).

Give Instruction 11.40.

Use applicable bracketed material.

11.40 Issues In Criminal Housing Management

To sustain the charge of criminal housing management, the State must prove the following propositions:

First Proposition: That the defendant had [(personal management) (control)] of the real estate as a [(legal owner) (equitable owner) (managing agent)]; and

Second Proposition: That the nature of the real estate at _____ was residential; and

Third Proposition: That the defendant knowingly, by his gross [(carelessness) (neglect)] permitted the real estate to become or remain so deteriorated that the [(health) (safety)] of an inhabitant was endangered.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-5.1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-5.1 (1991)).

Give Instruction 11.39.

Insert in the blank the address of the real estate if alleged in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.41 Definition Of Intimidation

A person commits the offense of intimidation when he, with intent to cause another to [(perform) (omit the performance of)] any act, communicates to the other person a threat to, without lawful authority,

[1] inflict physical harm on [(the person threatened) (any other person) (property)],

[or]

[2] subject any person to physical [(confinement) (restraint)].

[or]

[3] commit any criminal offense.

[or]

[4] accuse any person of a criminal offense.

[or]

[5] expose any person to [(hatred) (contempt) (ridicule)].

[or]

[6] take action as a public official against [(anyone) (anything)].

[or]

[7] withhold official action as a public official.

[or]

[8] cause [(official action) (withholding of official action)] by a public official.

[or]

[9] bring about or continue a [(strike) (boycott) [other collective action]].

Committee Note

720 ILCS 5/12-6 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-6 (1991)).

Give Instruction 11.42.

The Committee has made the phrase “without lawful authority” applicable to each paragraph because here, unlike the battery statute, the phrase seems to be an integral part of the offense, and not a matter of defense. That is, the statute says: “. . . threat to perform without lawful authority any of the following acts . . .” The Committee believes “without lawful authority” is part of the threat and is an element of the crime. See Ill. Ann. Stat. ch. 38, para. 12-6 (Smith-Hurd 1979) (Committee Comments). *But see People v. Hubble*, 81 Ill. App. 3d 560, 37 Ill. Dec. 189, 401 N.E.2d 1282 (2d Dist. 1980).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.41X Definition Of Aggravated Intimidation

A person commits the offense of aggravated intimidation when he is a streetgang member and he commits the offense of intimidation in furtherance of the activities of an organized gang.

Committee Note

720 ILCS 5/12-6.2 (West 1997), added by P.A. 89-631, effective January 1, 1997.

Give Instruction 11.42X.

Give Instructions § 11.41 and § 11.42, the definitional instruction and the issues instruction for the offense of intimidation. See the Committee Notes to Instructions 11.41 and 11.42.

If the definition of the term “streetgang,” “streetgang member,” or “organized gang” becomes an issue, see Instructions 4.20 and 4.21 which define these terms. See 720 ILCS 12-6.2 (c) (West 1997).

11.42 Issues In Intimidation

To sustain the charge of intimidation, the State must prove the following propositions:

First Proposition: That the defendant communicated to _____ a threat to, without lawful authority,

[1] inflict physical harm on [(_____) (any other person) (property)];

[or]

[2] subject [(_____) (any person)] to physical [(confinement) (restraint)];

[or]

[3] commit any criminal offense;

[or]

[4] accuse [(_____) (any person)] of an offense;

[or]

[5] expose [(_____) (any person)] to [(hatred) (contempt) (ridicule)];

[or]

[6] take action as a public official against _____;

[or]

[7] withhold official action as a public official;

[or]

[8] cause the [(taking of action) (withholding of action)] by a public official;

[or]

[9] bring about or continue a [(strike) (boycott) [other collective action]];

and

Second Proposition: That the defendant then intended to cause _____ to [(perform) (omit the performance of)] an act.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-6 (1991)).

Give Instruction 11.41.

Insert in the appropriate blanks the name of the victim, person, or thing.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.42X Issues In Aggravated Intimidation

To sustain the charge of intimidation, the State must prove the following propositions:

First Proposition: That the defendant was a streetgang member; and

Second Proposition: That the defendant committed the offense of intimidation, and

Third Proposition: That the defendant did so in furtherance of the activities of an organized gang.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6.2 (West 1997), added by P.A. 89-631, effective January 1, 1997.

Give Instruction 11.41X.

See the Committee Note to Instruction 11.41X.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.43 Definition Of Compelling Organization Membership Of Persons

A person commits the offense of compelling organization membership of persons when he, with intent to [(solicit or cause any person to join) (deter any person from leaving)] any organization or association, regardless of the nature of the organization or association,

[1] expressly or impliedly threatens to do bodily harm to an individual or that individual's family.

[or]

[2] does bodily harm to an individual or that individual's family.

[or]

[3] uses _____.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-6.1 (1991)); amended by P.A. 89-8, effective March 21, 1995.

Give Instruction 11.44.

Give this instruction for charges brought under the first paragraph of Section 12-6.1. Give Instruction 11.85 (Definition of Compelling a Person Under 18 Years of Age to Join an Organization or Association) for charges brought under the second paragraph of Section 12-6.1.

The third alternative paragraph, defined in the statute as "any criminally unlawful means" applies only to something other than threats to do bodily harm or the actual infliction of bodily harm. Insert in the blank the criminally unlawful means to which the information or indictment refers.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.44 Issues In Compelling Organization Membership Of Persons

To sustain the charge of compelling organization membership of persons, the State must prove the following propositions:

[1] *First Proposition*: That the defendant expressly or impliedly threatened to do bodily harm to _____ or _____'s family;

[or]

[2] *First Proposition*: That the defendant did bodily harm to _____ or _____'s family;

[or]

[3] *First Proposition*: That the defendant used _____;

and

Second Proposition: That the defendant did so with intent to [(solicit or cause any person to join) (deter any person from leaving)] an organization or association.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-6.1 (1991)); amended by P.A. 89-8, effective March 21, 1995.

Give Instruction 11.44.

Give this instruction for charges brought under the first paragraph of Section 12-6.1. Give Instruction 11.86 (Issues in Compelling a Person Under 18 Years of Age to Join an Organization or Membership) for charges brought under the second paragraph of Section 12-6.1.

Insert in the blank the appropriate name.

The bracketed numbers [1] through [3] correspond to the alternatives of the same number in Instruction 11.43, the definitional instruction for this offense. Select the corresponding alternative First Proposition to the alternative selected from the definitional instruction.

If the third alternative First Proposition is used, insert in the blank the "criminally unlawful means" to which the information or indictment refers.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose

conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.45 Definition Of Compelling Confession, Statement, Or Information By Force Or Threat

A person commits the offense of compelling a[n] [(confession) (statement) (information)] by force or threat when he, with the intent to obtain a[n] [(confession) (statement) (information)] regarding any offense [(inflicts) (threatens to inflict)] physical harm on [(the person threatened) (any other person)].

Committee Note

720 ILCS 5/12-7 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-7 (1991)).

Give Instruction 11.46.

Use applicable bracketed material.

11.46 Issues In Compelling Confession, Statement, Or Information By Force Or Threat

To sustain the charge of compelling a[n] [(confession) (statement) (information)] by force or threat, the State must prove the following propositions:

First Proposition: That the defendant [(inflicted) (threatened to inflict)] physical harm on [(_____) (another person)]; and

Second Proposition: That the defendant then intended to obtain a[n] [(confession) (statement) (information)] regarding an offense.

If you find from consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-7 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-7 (1991)).

Give Instruction 11.45.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.47 Definition Of Hate Crime

A person commits the offense of hate crime when, by reason of the [(actual) (perceived)] [(race) (color) (creed) (religion) (ancestry) (gender) (sexual orientation) (physical disability) (mental disability) (national origin)] of another [(individual) (group of individuals)], he commits [(assault) (battery) (aggravated assault) (theft) (criminal trespass to residence) (criminal damage to property) (criminal trespass to vehicle) (criminal trespass to real property) (mob action) (disorderly conduct) (harassment by telephone)].

Committee Note

720 ILCS 5/12-7.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.1 (1991)), amended by P.A. 86-1418, effective January 1, 1991; P.A. 87-440, effective January 1, 1992; P.A. 87-1048, effective January 1, 1993; and P.A. 88-259, effective August 9, 1993.

Give Instruction 11.48.

When hate crime based on sexual orientation is alleged, give Instruction 11.47A, defining the term “sexual orientation.”

Give one of the following instructions for the offense committed as part of the offense of hate crime in conformance with the charge: 11.01 (assault); 11.05 (battery); 11.03 (aggravated assault); 13.03, 13.07, 13.09, 13.11, or 13.13 (theft); 14.13 (criminal trespass to residence); 16.01 (criminal damage to property); 16.09 (criminal trespass to vehicle); 16.11 (criminal trespass to real property); 19.01, 19.03, or 19.05 (mob action); 19.07 (disorderly conduct); or 19.09 (harassment by telephone).

Use applicable bracketed material.

11.47A Definition Of Sexual Orientation

The term “sexual orientation” means heterosexuality, homosexuality, or bisexuality.

Committee Note

720 ILCS 5/12-7.1(d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-7.1(d) (1991)).

11.48 Issues In Hate Crime

To sustain the charge of hate crime, the State must prove the following propositions:

First Proposition: That the defendant committed the offense of [(assault) (battery) (aggravated assault) (theft) (criminal trespass to residence) (criminal damage to property) (criminal trespass to vehicle) (criminal trespass to real property) (mob action) (disorderly conduct) (harassment by telephone)]; and

Second Proposition: That the defendant did so by reason of the [(actual) (perceived)] [(race) (color) (creed) (religion) (ancestry) (gender) (sexual orientation) (physical disability) (mental disability) (national origin)] of another [(individual) (group of individuals)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-7.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.1 (1991)), amended by P.A. 86-1418, effective January 1, 1991; P.A. 87-440, effective January 1, 1992; P.A. 87-1048, effective January 1, 1993; and P.A. 88-259, effective August 9, 1993.

Give Instruction 11.47.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.49 Definition Of Threatening Public Officials; Human Service Providers

A person commits the offense of threatening a [(public official) (human service provider)] when he knowingly delivers or conveys, directly or indirectly, to a [(public official) (human service provider)] by any means a communication containing a threat

[1] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)]

[or]

[2] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension that damage will occur to property in the custody, care, or control of the [(public official) (human service provider)] [or his immediate family];

and

[1] the threat was conveyed because of the performance or nonperformance of some [(public duty) (duty as a human service provider)].

[or]

[2] the threat was conveyed because of the hostility of the person making the threat toward the status or position of [(the public official) (human service provider)].

[or]

[3] the threat was conveyed because of any other factor relating to the official's public existence.

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013), amended by P.A. 91-335, effective January 1, 2000, adding a duly appointed assistant State's Attorney to the definition of "public official," amended P.A. 97-1079 effective January 1, 2013, adding paragraph [a-6], amended by P.A. 98-529 effective January 1, 2014, adding "human service providers" as persons covered under the act and defining "human service provider."

Give Instruction 11.50

When applicable, give Instruction 11.49A, defining a "public official."

When applicable, give Instruction 11.49B, defining "human service provider."

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.49A Definition Of Public Official And Immediate Family

A person [(holding the position of _____) (who has filed the required documents for nomination or election to the position of _____)] is a public official.

[When I use the term “required documents,” I mean _____.]

[The term “immediate family” means a public official’s [(spouse) (child) (children)].]

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013), amended by P.A. 87-238, effective January 1, 1992.

Section 12-9(b) provides the following definition:

“Public official” means a person who is elected to office in accordance with a statute or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions or in the case of an elective office any person who has filed the required documents for nomination or election to such office. “Public official” includes a duly appointed assistant State’s Attorney, assistant Attorney General, or Appellate Prosecutor; a sworn law enforcement or peace officer; a social worker, caseworker, or investigator employed by the Department of Healthcare and Family Services, the Department of Human Services, or the Department of Children and Family Services.

The Committee concluded that the nature of the office is a question of law to be decided by the court; whether the person allegedly threatened was such a public official is a question of fact for the jury. Insert in the blank the particular office held or filed for.

When applicable, insert in the blank in the first bracketed sentence the required documents that must be filed for nomination or election. The court should instruct the jury what the required documents are, and the jury need only decide if the documents were filed. The legal sufficiency of the documents is not an issue for the jury.

Use applicable bracketed material.

11.49B Definition Of Human Service Provider And Immediate Family

A human service provider is a person who is a [(social worker) (case worker) (investigator)] employed by an agency or organization providing [(social work) (case work) (investigative services)] under a [(contract with) (grant from)] [(the Department of Human Services) (the Department of Children and Family Services) (the Department of Healthcare and Family Services) (the Department on Aging)].

[The term “immediate family” means a human service provider’s [(spouse) (child) (children)].]

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013), amended by P.A. 98-529, effective January 1, 2014.

Section 12-9 provides the following definition:

“Human service provider means a social worker, case worker, or investigator employed by an agency or organization providing social work, case work, or investigative services under a contract with or a grant from the Department of Human Services, the Department of Children and Family Services, the Department of Healthcare and Family Services, or the Department on Aging.”

The Committee concluded that the nature of the position is a question of fact to be decided by the jury.

Use applicable bracketed material.

11.50 Issues In Threatening Public Officials; Human Service Providers

To sustain the charge of threatening a [(public official) (human service provider)] the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered or conveyed, directly or indirectly, to a [(public official) (human service provider)] by any means a communication containing a threat

[1] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)];

[or]

[2] that would place the [(public official) (human service provider)] [or a member of his immediate family] in reasonable apprehension that damage will occur to property in the custody, care, or control of the [(public official) (human service provider)] [or his immediate family];

and

Second Proposition: That _____ was a [(public official) (human service provider)] at the time of the threat;

and

[1] *Third Proposition:* That the threat was conveyed because of the performance or nonperformance of some [(public duty) (duty as a human service provider)].

[or]

[2] *Third Proposition:* That the threat was conveyed because of the hostility of the person making the threat toward the status or position of the [(public official) (human service provider)].

[or]

[3] *Third Proposition:* That the threat was conveyed because of any other factor relating to the official's public existence.

and

Fourth Proposition: That when the defendant conveyed the threat, he knew _____ was then [(a public official) (human service provider)].

[and]

[*Fifth Proposition:* That the threat to a [(sworn law enforcement officer) (social worker) (caseworker) (investigator) (human service provider)] contained specific facts indicative of a unique threat to the [(sworn law enforcement officer) (social worker) (caseworker) (investigator) (human service provider)] [(family) (property) of the (sworn law enforcement officer) (social worker) (caseworker) (investigator) (human service provider)]] and not a generalized threat of harm.]

If you find from your consideration of all the evidence that each one of these

propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved May 2, 2014.

720 ILCS 5/12-9 (West 2013).

Give Instructions 11.49.

When applicable give 11.49A.

When applicable give 11.49B.

Insert in the blanks the name of the public official or human service provider.

Use the Fifth Proposition when the public official is a sworn law enforcement officer, social worker, caseworker, investigator or a human service provider.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.51 Definition Of Armed Violence (Until June 30, 1994)

A person commits armed violence when he commits [(the offense of _____) (either the offense of _____ or the offense of _____)] while armed with a dangerous weapon.

A person is considered armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a _____. To be considered "otherwise armed," the person must have immediate access to or timely control over the weapon.

Committee Note

720 ILCS 5/33A-2 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 33A-2 (1991)).

Give Instruction 11.52. These instructions should *not* be used for any offense allegedly occurring *after* June 30, 1994.

Give the instruction defining the offense that is the subject of the armed violence.

When the aggravated version of armed violence is charged (see 720 ILCS 5/33A-3(a) (West Supp. 1993)), use Instructions 11.51X and 11.52X.

The judge shall determine whether the offense is a felony defined by Illinois law. However, the offense of armed violence cannot be predicated upon the following offenses: (1) first degree murder, second degree murder, or involuntary manslaughter (see *People v. Hobbs*, 249 Ill. App. 3d 679, 683, 188 Ill. Dec. 894, 897, 619 N.E.2d 258, 261 (5th Dist. 1993)); (2) unlawful restraint (see *People v. Murphy*, 261 Ill. App. 3d 1019, 1023, 200 Ill. Dec. 9, 12, 635 N.E.2d 110, 113 (2d Dist. 1994)); and (3) aggravated battery based upon the use of a deadly weapon (see *People v. Haron*, 85 Ill. 2d 261, 278, 52 Ill. Dec. 625, 632, 422 N.E.2d 627, 634 (1981)).

If the defendant is charged with two or more counts of aggravated battery and armed violence, the armed violence instructions must clearly indicate that it is not predicated upon the offense of aggravated battery based upon the use of a deadly weapon. See *People v. Hines*, 257 Ill. App. 3d 238, 244-45, 195 Ill. Dec. 955, 959, 629 N.E.2d 540, 544 (1st Dist. 1993). Accordingly, if the defendant is charged with armed violence and two or more counts of aggravated battery, one of which is aggravated battery based upon use of a deadly weapon, two separate sets of aggravated battery instructions should be given—one set for aggravated battery based upon use of a deadly weapon and the other set for all the other types of aggravated battery charged. See Instructions 11.15 and 11.16. The Committee believes that giving two sets of instructions will assist the jury in differentiating aggravated battery based upon use of a deadly weapon from the other type of aggravated battery charged.

For example, if the defendant is charged with aggravated battery based upon (1) use of a deadly weapon, (2) the victim of the battery being over 60 years of age, and (3) the defendant concealing his identity, two separate sets of Instructions 11.15 and 11.16 should be given. In one set, the phrase "based upon use of a deadly weapon" would be inserted after "A person commits the offense of aggravated battery" at the beginning of both Instructions 11.15 and 11.16. The second set of instructions should include the phrase "other than with the use of a deadly weapon" after the opening phrase. Two parallel sets of verdict forms should also be given. In the

armed violence instructions, the phrase “aggravated battery other than with the use of a deadly weapon” should be inserted in the first blank in Instruction 11.51 and the two blanks in Instruction 11.52.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. See *People v. Simmons*, 93 Ill. 2d 94, 66 Ill. Dec. 330, 442 N.E.2d 891 (1982).

The Illinois Supreme Court has held that a person is “otherwise armed” for purposes of the armed violence statute only if the person has “immediate access to or timely control over the weapon.” *People v. Harre*, 155 Ill. 2d 392, 185 Ill. Dec. 550, 614 N.E.2d 1235 (1993); *People v. Condon*, 148 Ill. 2d 96, 170 Ill. Dec. 271, 592 N.E.2d 951 (1992).

There may be cases where the category of weapon used is an essential element of the offense. If so, the defendant would be entitled to instructions and a jury finding on the category of weapon. See *People v. Foust*, 82 Ill. App. 3d 516, 37 Ill. Dec. 236, 401 N.E.2d 1329 (4th Dist. 1980).

See 720 ILCS 5/33A-1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 33A-1 (1991)), for the list of weapons that applies to this instruction.

Insert in the first blank the same of the “felony defined by Illinois law.”

Insert in the second blank the same of the alleged dangerous weapon.

11.51X Definition Of Aggravated Armed Violence (From July 1, 1994 Until December 31, 1994)

A person commits aggravated armed violence when he commits [(the offense of _____) (either the offense of _____ or the offense of _____)] in relation to the activities of an organized gang while armed with a [(pistol) (revolver) (rifle) (shotgun) (spring gun) (firearm) (sawed-off shotgun) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto)] [or any other deadly or dangerous weapon or instrument of like character], and while [1] in a school.

[or]

[2] on the real property comprising a school.

[or]

[3] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[4] on the real property comprising a public park.

A person is considered armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a _____. To be considered “otherwise armed,” the person must have immediate access to or timely control over the weapon.

Committee Note

720 ILCS 5/33A-3(a) (West Supp. 1993) (formerly Ill. Rev. Stat. ch. 38, § 33A-3(a) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.52X. These instructions should be used *only* for offenses allegedly occurring between July 1, 1994 and December 31, 1994.

Give the instruction defining the offense that is the subject of the armed violence.

See the Committee Note to Instruction 11.51 regarding offenses which cannot be a predicate offense for armed violence. Also, see the Committee Note to Instruction 11.51 regarding use of this instruction when the predicate offense is aggravated battery.

Section 33A-3(a) provides an enhanced penalty for the violation of Section 33A-2 when committed with a category I weapon (see 720 ILCS 5/33A-1(b)) in relation to organized gang activities on the premises listed in the above alternative paragraphs [1] through [4]. The sentencing range for a violation of Section 33A-2 is enhanced under Section 33A-3(a). Select the alternative that corresponds to the location in the charge.

The Committee has created separate instructions for “aggravated” armed violence because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill. App. 3d 369, 378–79, 203 Ill. Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994).

Because the Committee believes that “simple” armed violence instructions will

typically be given as a lesser included offense when “aggravated” armed violence is charged, the Committee titled this offense “aggravated armed violence” to distinguish it from “simple” armed violence. If only “aggravated” armed violence instructions are given to the jury, the term “aggravated” should be removed from the title as set out in the first sentence of this instruction and issues Instruction 11.52X.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. See *People v. Simmons*, 93 Ill. 2d 94, 66 Ill. Dec. 330, 442 N.E.2d 891 (1982).

The Illinois Supreme Court has held that a person is “otherwise armed” for purposes of the armed violence statute only if the person has “immediate access to or timely control over the weapon.” *People v. Harre*, 155 Ill. 2d 392, 185 Ill. Dec. 550, 614 N.E.2d 1235 (1993); *People v. Condon*, 148 Ill. 2d 96, 170 Ill. Dec. 271, 592 N.E.2d 951 (1992).

When applicable, give Instruction 18.35A (defining the term “switchblade knife”), Instruction 18.35E (defining the term “stun gun or taser”), Instruction 18.35F (defining the term “school”), and Instruction 18.35G (defining the term “firearm”).

If the definition of “organized gang” becomes an issue, see Section 10 of the Streetgang Terrorism Omnibus Prevention Act (740 ILCS 147/10 (West Supp. 1993)) which defines this term. See 720 ILCS 33A-3(a) (West Supp. 1993).

Insert in the first blank the name of the “felony defined by Illinois law.”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.51Y Definition Of Armed Violence (As Of January 1, 1995)

A person commits armed violence when he commits [(the offense of _____) (either the offense of _____ or the offense of _____)] while he carries on or about his person or is otherwise armed with a

[1] [(handgun) (sawed-off shotgun) (sawed-off rifle)] [or any other firearm small enough to be concealed upon his person].

[or]

[2] [(semiautomatic firearm) (machine gun)].

[or]

[3] [(rifle) (shotgun) (spring gun) (firearm) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto) (axe) (hatchet)] [or other deadly or dangerous weapon or instrument of like character].

A person is consider armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a _____. To be considered "otherwise armed," the person must have immediate access to or timely control over the weapon.

Committee Note

720 ILCS 5/33A-3(a) and 3(a-5) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 33A-3(a) (1991)), amended by P.A. 8-680, effective January 1, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 33A-1 and 33A-3. As a result, *only* use this instruction for cases in which the alleged armed violence occurred on or after January 1, 1995. For armed violence offenses which occurred between July 1, 1994, and December 31, 1994, use Instruction 11.51X. See the Committee Note to Instruction 11.51X.

Give Instruction 11.52Y.

Give the instruction defining the offense that is the subject of the armed violence.

See the Committee Note to Instruction 11.51 regarding offenses which cannot be a predicate offense for armed violence. Also, see the Committee Note to Instruction 11.51 regarding use of this instruction when the predicate offense is aggravated battery.

Section 33A-3(a) and 3(a-5) provide an enhanced penalty for the violation of Section 33A-2 when committed with a category I or category II weapon (see 720 ILCS 5/33A-1(b)). The sentencing range for a violation of Section 33A-2 is enhanced under Section 33A-3(a) and 3(a-5). Alternatives [1] and [2] set forth the category I weapons, and alternative [3] sets forth the category II weapons. Select the alternative that corresponds to the weapon in the charge.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. See *People v. Simmons*, 93 Ill. 2d 94, 66 Ill. Dec. 330, 442 N.E.2d 891 (1982).

The Illinois Supreme Court has held that a person is "otherwise armed" for

purposes of the armed violence statute only if the person has “immediate access to or timely control over the weapon.” *People v. Harre*, 155 Ill. 2d 392, 185 Ill. Dec. 550, 614 N.E.2d 1235 (1993); *People v. Condon*, 148 Ill. 2d 96, 170 Ill. Dec. 271, 592 N.E.2d 951 (1992).

The Committee has created separate instructions for armed violence because the State must prove the existence of the enhancing factors beyond a reasonable doubt. See *People v. Martin*, 266 Ill. App. 3d 369, 378–79, 203 Ill. Dec. 718, 725, 640 N.E.2d 638, 645 (4th Dist. 1994).

When applicable, give Instruction 18.35A (defining the term “switchblade knife”), Instruction 18.35D (defining the term “machine gun”), Instruction 18.35E (defining the term “stun gun or taser”), Instruction 18.35G (defining the term “firearm”), Instruction 18.35I (defining the term “handgun”), and Instruction 18.35K (defining the term “semiautomatic firearm”).

Insert in the first blank the name of the “felony defined by Illinois law.”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.52 Issues In Armed Violence (Until June 30, 1994)

To sustain the charge of armed violence, the State must prove the following propositions:

First Proposition: That the defendant committed [(the offense of _____) (either the offense of _____ or the offense of _____)]; and

Second Proposition: That when the defendant committed [(the offense of _____) (either the offense of _____ or the offense of _____)] he was armed with a dangerous weapon.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33A-2 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 33A-2 (1991)).

Give Instruction 11.51, and see the Committee Note concerning category of weapons, the predicate felony offense charged, and the need for separate sets of instructions if the predicate offense is one type of aggravated battery and the defendant is also charged with aggravated battery based upon use of a deadly weapon. Instructions 11.51 and 11.52 should *not* be used for any offense allegedly occurring *after* June 30, 1994.

Insert in the appropriate blanks the name of the offense.

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See People v. Simmons*, 93 Ill. 2d 94, 66 Ill. Dec. 330, 442 N.E.2d 891 (1982).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.52X Issues In Aggravated Armed Violence (From July 1, 1994 Until December 31, 1994)

To sustain the charge of aggravated armed violence, the State must prove the following propositions:

First Proposition: That the defendant committed [(the offense of _____) (either the offense of _____ or the offense of _____)];

Second Proposition: That when the defendant committed [(the offense of _____) (either the offense of _____ or the offense of _____)], he was armed with a [(pistol) (revolver) (rifle) (shotgun) (spring gun) (firearm) (sawed-off shotgun) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto)] [or any other deadly or dangerous weapon or instrument of like character]; and

Third Proposition: That defendant committed this offense in relation to the activities of an organized gang; and

Fourth Proposition: That the defendant did so while

[1] in a school.

[or]

[2] on the real property comprising a school.

[or]

[3] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[4] on the real property comprising a public park.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33A-3(a) (West Supp. 1993) (formerly Ill. Rev. Stat. ch. 38, § 33A-3(a) (1991)), amended by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.51X, and see the Committee Note concerning the category of weapon and the predicate felony offense charged. Instructions 11.51X and 11.52X should be used *only* for an offense allegedly occurring between July 1, 1994 and December 31, 1994.

See also the Committee Note to Instruction 11.51X concerning the need for definitional instructions and a discussion of sentencing enhancement under Section 33A-3(a).

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. See *People v. Simmons*, 93 Ill. 2d 94, 66 Ill. Dec. 330, 442 N.E.2d 891 (1982).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.52Y Issues In Armed Violence (As Of January 1, 1995)

To sustain the charge of armed violence, the State must prove the following propositions:

First Proposition: That the defendant committed [(the offense of _____) (either the offense of _____ or the offense of _____)]; and

Second Proposition: That when the defendant committed [(the offense of _____) (either the offense of _____ or the offense of _____)], he was carrying on or about his person or was otherwise armed with a

[1] [(handgun) (sawed-off shotgun) (sawed-off rifle)] [or any other firearm small enough to be concealed upon his person].

[or]

[2] [(semiautomatic firearm) (machine gun)].

[or]

[3] [(rifle) (shotgun) (spring gun) (firearm) (stun gun or taser) (knife with a blade of at least 3 inches in length) (dagger) (dirk) (switchblade knife) (stiletto) (axe) (hatchet)] [or other deadly or dangerous weapon or instrument of like character].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/33A-3(a) and 3(a-5) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 33A-3(a) (1991)), amended by P.A. 88-680, effective January 1, 1995.

P.A. 88-680, effective January 1, 1995, substantively amended Section 33A-1 and 33A-3. As a result, *only* use this instruction for cases in which the alleged armed violence occurred on or after January 1, 1995. For armed violence offenses which occurred between July 1, 1994, and December 31, 1994, use Instruction 11.52X. See the Committee Note to Instruction 11.52X.

Give Instruction 11.51Y, and see the Committee Note concerning the category of weapon and the predicate felony offense charged.

See also the Committee Note to Instruction 11.51Y concerning the need for definitional instructions and a discussion of sentencing enhancement under Section 33A-3(a) and 3(a-5).

A conviction for armed violence can be based either on the predicate charged offense or a lesser included offense of the predicate charged offense. Use the applicable bracketed material in the first paragraph. *See People v. Simmons*, 93 Ill. 2d 94, 66 Ill. Dec. 330, 442 N.E.2d 891 (1982).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.53 Definition Of Home Invasion

A person commits the offense of home invasion when he, [(not being a peace officer acting in the line of duty, without authority, knowingly enters the dwelling place of another) (falsely represents himself, including but not limited to, falsely represents himself to be a representative of any unit of government or a construction company or a telecommunications company or a utility company, for the purpose of gaining entry to the dwelling place of another)] [(when) (and remains in such dwelling place until)] he knows or has reason to know that one or more persons is present, and

[1] while armed with a dangerous weapon, other than a firearm, he uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs.

[or]

[2] intentionally causes any injury to any person within the dwelling place.

[or]

[3] while armed with a firearm uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs.

[or]

[4] uses force or threatens the imminent use of force upon any person or persons within the dwelling place whether or not injury occurs and during the commission of the offense personally discharges a firearm.

[or]

[5] personally discharges a firearm that proximately causes [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person within the dwelling place.

[or]

[6] commits, against any person or persons within that dwelling place, the offense of [(criminal sexual assault) (aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (criminal sexual abuse) (aggravated criminal sexual abuse)].

Committee Note

Instruction and Committee Note Approved May 13, 2015

720 ILCS 5/19-6 (West 2013), amended by P.A. 90-787, effective August 14, 1998 defining “dwelling place of another”; amended by P.A. 91-404, effective January 1, 2000, inserting “other than a firearm” and adding paragraphs [3], [4], and [5]; amended by P.A. 91-928, effective June 1, 2001, adding paragraph [6]; amended by P.A. 96-113, effective January 1, 2011, inserting “or who falsely represents himself or herself, including but not limited to, falsely representing himself or herself to be a representative of any unit of government or a construction, telecommunications, or utility company, for the purpose of gaining entry to the dwelling place of another when he or she knows or has reason to know that one or

more persons are present”; amended by P.A. 97-1108, effective January 1, 2013, renumbering this section which was formerly 720 ILCS 5/12-11.

Give Instruction 11.54.

When applicable, give Instruction 11.53A when an issue arises regarding the defendant’s criminal intent when he entered the dwelling and whether this intent, or lack thereof, makes his entry into the dwelling “with authority” or “without authority.” See the Committee Note to Instruction 11.53A.

When applicable, give Instruction 11.53B, defining “injury.”

When applicable, give Instruction 11.53C, defining “dwelling place of another.”

When applicable, give Instruction 11.55, defining “criminal sexual assault.”

When applicable, give Instruction 11.57, defining “aggravated criminal sexual assault.”

When applicable, give Instruction 11.103, defining “predatory criminal sexual assault of a child.”

When applicable, give Instruction 11.59, defining “criminal sexual abuse.”

When applicable, give Instruction 11.61, defining “aggravated criminal sexual abuse.”

When the nature of the place is an issue, give Instruction 4.03, defining “dwelling place.”

When applicable, give Instructions 24–25.25, “defense to home invasion” and 24–25-25A, “issue in defense to home invasion.”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.53A Unauthorized Entry—Limited Authority Doctrine—Home Invasion And Residential Burglary

The defendant's entry into a dwelling of another is "without authority" if, at the time of entry into the dwelling, the defendant has an intent to commit a criminal act within the dwelling regardless of whether the defendant was initially invited into or received consent to enter the dwelling.

However, the defendant's entry into the dwelling is "with authority" if the defendant enters the dwelling without criminal intent and was initially invited into or received consent to enter the dwelling, regardless of what the defendant does after he enters.

Committee Note

This instruction should be given *only* when an issue arises regarding the defendant's criminal intent when he entered the dwelling, and whether this intent, or lack thereof, affects the status of his entry—"with authority" or "without authority." See *People v. Bush*, 157 Ill. 2d 248, 253–54, 623 N.E.2d 1361, 1364 (1993).

The "limited-authority" doctrine provides that a defendant's authority to enter a private residence is limited only to the specific purpose for which he entered. Thus, the defendant's entry into a dwelling is unauthorized if prior to the defendant's entry into the dwelling, the defendant intends to commit a criminal act within the dwelling. When this is the case, the status of his entry is *not affected* by whether he was invited into the dwelling or received consent to enter the dwelling. As noted by the court in *Bush*,

No individual who is granted access to a dwelling can be said to be an authorized entrant if he intends to commit criminal acts therein, because, if such intentions had been communicated to the owner at the time of entry, it would have resulted in the individual's being barred from the premises *ab initio*.

Bush, 157 Ill. 2d at 253–54, 623 N.E.2d at 1364. However, if the defendant does not form his criminal intent until after he has entered the dwelling, then his invited or consented entry into the dwelling is authorized. *Bush*, 157 Ill. 2d at 253–54, 623 N.E.2d at 1364; see also *People v. Peebles*, 155 Ill. 2d 422, 487–88, 616 N.E.2d 294, 325 (1993).

This "limited authority" doctrine applies to residential burglary by unauthorized entry. *United States v. Glispie*, 2020 IL 125483, ¶ 22, 181 N.E.3d 719, 725. The Illinois Supreme Court has expressly declined to determine whether the limited authority doctrine applies to residential burglary by remaining. *Glispie*, 2020 IL 125483, ¶ 22, 181 N.E.3d at 725 ("The question of whether the doctrine applies to residential burglary by remaining is not before us, and thus we decline to answer it.")

11.53B Definition Of Injury

The term “injury” in the definition of home invasion may include physical injury. It also includes psychological or emotional trauma if that trauma was the result of some physical contact.

Committee Note

Give Instructions 11.53 and 11.54.

This instruction should be given when the evidence presents an issue as to whether or not the defendant caused an injury to a person within the dwelling place. The term “an injury” has been held not to require physical evidence of bodily harm, such as bruises, lacerations, etc. *People v. Garrett*, 281 Ill. App. 3d 535, 217 Ill. Dec. 337, 667 N.E.2d 130 (5th Dist. 1996). See also *People v. Garza*, 125 Ill. App. 3d 182, 80 Ill. Dec. 483, 465 N.E.2d 595 (1st Dist. 1984); *People v. Ehrich*, 165 Ill. App. 3d 1060, 116 Ill. Dec. 922, 519 N.E.2d 1137 (4th Dist. 1998).

11.53C Definition Of Dwelling Place Of Another

The phrase “dwelling place of another” includes a dwelling place where the defendant maintains a tenancy interest but from which the defendant has been barred by a [(divorce decree) (judgment of dissolution of marriage) (order of protection) (_____)].

Committee Note

Instruction and Committee Note Approved May 13, 2015

720 ILCS 5/19-6(d) (West 2013), effective August 14, 1998.

Insert in the blank the “other court order” which bars the defendant from entry into the dwelling place.

11.54 Issues In Home Invasion

To sustain the charge of home invasion, the State must prove the following propositions:

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant was armed with a dangerous weapon other than a firearm; and

Fifth Proposition: That while armed with a dangerous weapon other than a firearm the defendant [(used force) (threatened the imminent use of force)] on _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: The defendant intentionally caused injury to _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant was armed with a firearm; and

Fifth Proposition: That while armed with a firearm the defendant [(used force) (threatened the imminent use of force)] on _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant [(used force) (threatened the imminent use of force)] on _____, a person within the dwelling place; and

Fifth Proposition: That the defendant personally discharged a firearm during the commission of the offense.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant personally discharged a firearm during the commission of the offense which proximately caused [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to _____, a person within the dwelling place.

[or]

First Proposition: That the defendant was not a peace officer acting in the line of duty; and

[or]

First Proposition: That the defendant falsely represented himself [to be a representative of (any unit of government) (a construction company) (a telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant knowing and without authority entered the dwelling place of another; and

Third Proposition: That [(when the defendant entered the dwelling place) (the defendant remained in the dwelling place until)] he knew or had reason to know that one or more persons was present; and

Fourth Proposition: That the defendant committed the offense of [(criminal sexual assault) (aggravated criminal sexual assault) (predatory criminal sexual assault of a child) (criminal sexual abuse) (aggravated criminal sexual abuse)] on _____, a person within the dwelling place.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved May 13, 2015

720 ILCS 5/19-6 (West 2013), amended by P.A. 90-787, effective August 14, 1998 defining “dwelling place of another”; amended by P.A. 91-404, effective January 1, 2000, inserting “other than a firearm” and adding paragraphs [3], [4], and [5]; amended by P.A. 91-928, effective June 1, 2001, adding paragraph [6]; amended by P.A. 96-113, effective January 1, 2011, inserting “or who falsely

represents himself or herself, including but not limited to, falsely representing himself or herself to be a representative of any unit of government or a construction, telecommunications, or utility company, for the purpose of gaining entry to the dwelling place of another when he or she knows or has reason to know that one or more persons are present”; amended by P.A. 97-1108, effective January 1, 2013, renumbering this section which was formerly 720 ILCS 5/12-11.

Give Instruction 11.53.

When applicable, give Instruction 11.53A when an issue arises regarding the defendant’s criminal intent when he entered the dwelling and whether this intent, or lack thereof, makes his entry into the dwelling “with authority” or “without authority.” See the Committee Note to Instruction 11.53A.

When applicable, give Instruction 11.53B, defining “injury.”

When applicable, give Instruction 11.53C, defining “dwelling place of another.”

When applicable, give Instruction 11.55, defining “criminal sexual assault.”

When applicable, give Instruction 11.57, defining “aggravated criminal sexual assault.”

When applicable, give Instruction 11.103, defining “predatory criminal sexual assault of a child.”

When applicable, give Instruction 11.59, defining “criminal sexual abuse.”

When applicable, give Instruction 11.61, defining “aggravated criminal sexual abuse.”

When the nature of the place is an issue, give Instruction 4.03, defining “dwelling place.”

When applicable, give Instructions 24–25.25, “defense to home invasion” and 24–25-25A, “issue in defense to home invasion.”

Insert in the blanks the name of the victim in the applicable Fourth or Fifth Proposition.

Insert in the blank in the second alternative First Proposition the type of entity that the defendant falsely represented himself to be a representative of.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.55 Definition Of Criminal Sexual Assault

A person commits the offense of criminal sexual assault when he

[1] commits an act of sexual penetration upon the victim by the use of force or threat of force.

[or]

[2] commits an act of sexual penetration upon the victim knowing that the victim was unable to [(understand the nature of the act) (give knowing consent to the act)].

[or]

[3] is a [(family member) (person responsible for the child's welfare)] and commits an act of sexual penetration with the victim who was under 18 years of age when the act is committed.

[or]

[4] commits an act of sexual penetration with the victim who was at least 13 years of age but under 18 years of age when the act is committed, and he is 17 years of age or older and holds a position of trust, authority, or supervision in relation to the victim.

Committee Note

720 ILCS 5/12-13 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-13 (1991)), amended by P.A. 85-1030, effective July 1, 1988; P.A. 85-1209, effective August 30, 1988; and P.A. 85-1440, effective February 1, 1989.

Give Instruction 11.56.

Give Instruction 11.65E, defining the term “sexual penetration.”

In paragraph [3], the bracketed material concerning a person responsible for the child's welfare was added by P.A. 85-1209 and should be used only for offenses committed after the effective date of that Act and before the effective date of P.A. 85-1440 which deleted that element. When applicable, give Instruction 11.65B, defining the term “family member.” When applicable, give Instruction 11.65H, defining the phrase “a person responsible for the child's welfare.”

The offense defined in paragraph [4] was added by P.A. 85-1030, deleted by P.A. 85-1209, and re-added by P.A. 85-1440, and that portion of the instruction should be used only for offenses committed between the effective dates of P.A. 85-1030 and P.A. 85-1209, and after the effective date of P.A. 85-1440.

The Third District Appellate Court has held that the phrase “a position of trust, authority, or supervision” is not unconstitutionally vague and that the words should be understood in their ordinary dictionary meanings. *People v. Secor*, 279 Ill. App. 3d 389, 216 Ill. Dec. 126, 664 N.E.2d 1054 (1996). See also *People v. Reynolds*, 294 Ill. App. 3d 58, 228 Ill. Dec. 463, 689 N.E.2d 335 (1st Dist. 1997).

In *People v. Terrell*, 132 Ill. 2d 178, 138 Ill. Dec. 176, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide

the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210, 547 N.E.2d at 159, 138 Ill. Dec. at 190; see also Sections 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in *People v. Burton*, 201 Ill. App. 3d 116, 146 Ill. Dec. 1035, 558 N.E.2d 1369 (4th Dist. 1990), the court held that *Terrell* does not require the mental states to be included in the jury instruction. See also *People v. Smith*, 209 Ill. App. 3d 1043, 154 Ill. Dec. 482, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

If the defendant is a physician, nurse, or other medical professional who claims to have been conducting a medical procedure consistent with reasonable medical standards, the State must prove "beyond a reasonable doubt what the reasonable medical standards were, that the physician intentionally transgressed those standards, and that the patient did not consent to the transgressions." In such a case, modified instructions will be necessary. See *People v. Burpo*, 164 Ill. 2d 261, 265, 207 Ill. Dec. 503, 505, 647 N.E.2d 996, 998 (1995).

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of this instruction, see Sample Set 27.03.

11.56 Issues In Criminal Sexual Assault

To sustain the charge of criminal sexual assault, the State must prove the following propositions:

[1] *First Proposition:* That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That the act was committed by the use of force or threat of force[; and

Third Proposition: That _____ did not consent to the act of sexual penetration].

[or]

[2] *First Proposition:* That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That the defendant knew that _____ was unable to [(understand the nature of the act) (give knowing consent to the act)].

[or]

[3] *First Proposition:* That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That _____ was under 18 years of age when the act was committed; and

Third Proposition: That the defendant was [(a family member) (a person responsible for the child's welfare)].

[or]

[4] *First Proposition:* That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That when the act was committed _____ was at least 13 years of age but under 18 years of age; and

Third Proposition: That when the act was committed the defendant was 17 years of age or over; and

Fourth Proposition: That when the act was committed the defendant held a position of trust, authority, or supervision in relation to the victim.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-13(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-13(a) (1991)).

Give Instruction 11.55.

See the Committee Note to Instruction 11.55 to distinguish recent additions to the statute.

The Third District Appellate Court has held that the phrase “a position of trust, authority, or supervision” is not unconstitutionally vague and that the words should be understood in their ordinary dictionary meanings. *People v. Secor*, 279 Ill. App. 3d 389, 216 Ill. Dec. 126, 664 N.E.2d 1054 (1996). See also *People v. Reynolds*, 294 Ill. App. 3d 58, 228 Ill. Dec. 463, 689 N.E.2d 335 (1st Dist. 1997).

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under *People v. Coleman*, 166 Ill. App. 3d 242, 117 Ill. Dec. 65, 520 N.E.2d 55 (1st Dist. 1987), to give the bracketed Third Proposition in the first set of propositions. Also give Instructions 11.63 and 11.63A. See Chapter 720, Section 12-17(a) and the Introduction to Chapter 24–25.00. However, for a contrary discussion, see *People v. Roberts*, 182 Ill. App. 3d 313, 130 Ill. Dec. 751, 537 N.E.2d 1080 (1st Dist. 1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.03.

11.57 Definition Of Aggravated Criminal Sexual Assault

[a] A person commits the offense of aggravated criminal sexual assault when he commits criminal sexual assault and

[1] [(displays) (threatens to use) (uses)] [(a dangerous weapon other than a firearm) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] causes bodily harm to the victim.

[or]

[3] acts in such a manner as to threaten or endanger the life of [(the victim) (any other person)].

[or]

[4] the criminal sexual assault is perpetrated during the course of the [(commission) (attempted commission)] of the offense of _____.

[or]

[5] the victim is 60 years of age or over when the offense is committed.

[or]

[6] the victim is a physically handicapped person when the offense is committed.

[or]

[7] as part of the same course of conduct, delivers by [(injection) (inhalation) (ingestion) (transfer of possession) (any other means)] to the victim [(without his or her consent) (by threat or deception)], and for other than medical purposes, any controlled substance.

[or]

[8] is armed with a firearm.

[or]

[9] personally discharges a firearm during the commission of the offense.

[or]

[10] personally discharges a firearm during the commission of the offense that proximately causes [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person.

[or]

[b] A person commits the offense of aggravated criminal sexual assault when he is under 17 years of age and commits an act of sexual penetration with

[1] a victim who is under 9 years of age when the act is committed.

[or]

[2] a victim who is at least 9 years of age but under 13 years of age when the

act is committed and the accused used [(force) (threat of force)] to commit the act.

[or]

[c] A person commits the offense of aggravated criminal sexual assault when he

[1] commits an act of sexual penetration with a victim and

[2] the victim is a severely or profoundly mentally retarded person at the time the act is committed.

Committee Note

720 ILCS 5/12-14 (West 2011) (formerly Ill. Rev. Stat. ch. 38, § 12-14 (1991)), amended by P.A. 85-691, effective January 1, 1988; P.A. 85-1392, effective January 1, 1989; P.A. 89-428, effective December 13, 1995; P.A. 89-462, effective May 29, 1996; P.A. 90-396, effective January 1, 1998; P.A. 90-735, effective August 11, 1998; P.A. 91-404, effective January 1, 2000; P.A. 92-434, effective January 1, 2002; P.A. 92-502, effective December 19, 2001; P.A. 92-721, effective January 1, 2003.

Give Instruction 11.55.

When paragraph [a] or paragraph [c] is used, give appropriate set of propositions in Instruction 11.58.

Insert in the blank the name of the felony.

When the charge against defendant of criminal sexual assault is based on defendant's being a family member or person responsible for the child's welfare, aggravated by a factor listed in this instruction, give Instruction 11.58A.

When paragraph [b] is used give Instruction 11.58B.

In alternative [a] [6], the element concerning a victim who was physically handicapped was added by P.A. 85-691, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

In paragraph [c], the element concerning the mental disability of the victim was added by

P.A. 85-1392, and that portion of the instruction should be used only for offenses committed after the effective date of that Act. When applicable, give Instruction 11.65G, defining "institutionalized severely or profoundly mentally retarded person". In *People v. Terrell*, 132 Ill. 2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210; see also 720 ILCS 5/43 through 4-6 (West 2010); Committee Notes to Instructions 5.01A and 5.01B. However, in *People v. Burton*, 201 Ill. App. 3d 116, 558 N.E.2d 1369 (4th Dist. 1990), the court held that *Terrell* does not require the mental states to be included in the jury instruction. See also *People v. Smith*, 209 Ill. App. 3d 1043, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be

instructed on the mental states implied in the offense of aggravated criminal sexual assault. In *People v. Simms*, 192 Ill. 2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

Alternative [a][7] was added by P.A.90-735, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

P.A. 91-404 added alternatives [a][8], [a][9] and [a][10] and added the element “other than a firearm” to [a][1]. These portions of the instruction should be used only for offenses committed after the effective date of that Act.

In paragraph [c], P.A. 92-434 deleted the element “institutionalized.”

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

11.58 Issues In Aggravated Criminal Sexual Assault—Aggravation By Circumstances

To sustain the charge of aggravated criminal sexual assault, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That the act was committed by the use of force or threat of force[, and that _____ did not consent to the act of sexual penetration]; and [or]

Second Proposition: That the defendant knew that _____ was unable to [(understand the nature of the act) (give knowing consent)]; and

[1] *Third Proposition:* That the defendant [(displayed) (threatened to use) (used)] [(a dangerous weapon other than a firearm) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] *Third Proposition:* That the defendant caused bodily harm to _____.

[or]

[3] *Third Proposition:* That the defendant acted in such a manner as to threaten or endanger the life of [(the victim) (any other person)].

[or]

[4] *Third Proposition:* That the act of sexual penetration was perpetrated during the course of the [(commission) (attempted commission)] of the offense of _____ by the defendant.

[or]

[5] *Third Proposition:* That _____ was 60 years of age or older when the act was committed.

[or]

[6] *Third Proposition:* That _____ was a physically handicapped person when the act was committed.

[or]

[7] *Third Proposition:* That the defendant, as part of the same course of conduct, delivered by [(injection) (inhalation) (ingestion) (transfer of possession) (any other means)] to the victim [(without his or her consent) (by threat or deception)], and for other than medical purposes, any controlled substance.

[or]

[8] *Third Proposition:* That the defendant was armed with a firearm.

[or]

[9] *Third Proposition:* That the defendant personally discharged a firearm during the commission of the offense.

[or]

[10] *Third Proposition*: That the defendant personally discharged a firearm during the commission of the offense that proximately caused [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That _____ was a severely or profoundly mentally retarded person when the act was committed.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-13, 12-14 (West 2011) (formerly Ill. Rev. Stat. ch. 38, §§ 12-13, 12-14 (1991)).

Give Instruction 11.57.

Insert in the appropriate blanks the name of the victim and the name of the felony.

See the Committee Note to Instruction 11.57 to distinguish recent revisions to the statute.

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under *People v. Coleman*, 166 Ill. App. 3d 242, 520 N.E.2d 55, (1st Dist. 1987), to give the bracketed portion of the first alternative Second Proposition. Also give Instructions 11.63 and 11.63A. See Section 12-17(a) of the Criminal Code of 1961 and the Introduction to Chapter 24–25.00. However, for a contrary discussion, see *People v. Roberts*, 182 Ill. App. 3d 313, 537 N.E.2d 1080 (1st Dist. 1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

With regard to paragraph [4] in the first set of propositions, the Committee recommends that the court give the instruction defining the felony offense said to have been committed or attempted.

It should be noted that, unlike the other choices in this instruction, there are only two elements in an aggravated sexual assault based on the mental disability of the victim. Subsection (c) of Section 12-14 defines the offense as “an act of sexual penetration with a victim who was an severely or profoundly mentally retarded person at the time the act was committed.” 720 ILCS 5/12-14(c) (West 2010).

In *People v. Terrell*, 132 Ill. 2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute

despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210; see also 720 ILCS 5/43 through 4-6 (West 2010); Committee Notes to Instructions 5.01A and 5.01B. However, in *People v. Burton*, 201 Ill. App. 3d 116, 558 N.E.2d 1369 (4th Dist. 1990), the court held that *Terrell* does not require the mental states to be included in the jury instruction. See also *People v. Smith*, 209 Ill. App. 3d 1043, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In *People v. Simms*, 192 Ill. 2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with *Burton* that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. Give Instruction 5.03.

11.58A Issues In Aggravated Criminal Sexual Assault—Aggravation By Circumstances When Defendant Is A Family Member

To sustain the charge of aggravated criminal sexual assault, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That _____ was under 18 years of age when the act was committed; and

Third Proposition: That the defendant was a [(family member) (person responsible for the child's welfare)]; and

[1] *Fourth Proposition:* That the defendant [(displayed) (threatened to use) (used)] [(a dangerous weapon other than a firearm) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] *Fourth Proposition:* That the defendant caused bodily harm to _____.

[or]

[3] *Fourth Proposition:* That the defendant acted in such a manner as to threaten or endanger the life of [(the victim) (any other person)].

[or]

[4] *Fourth Proposition:* That the act of sexual penetration was perpetrated during the course of the [(commission) (attempted commission)] of the offense of _____.

[or]

[6] *Fourth Proposition:* That _____ was a physically handicapped person when the act was committed.

[or]

[7] *Fourth Proposition:* That the defendant, as part of the same course of conduct, delivered by [(injection) (inhalation) (ingestion) (transfer of possession) (any other means)] to the victim [(without his or her consent) (by threat or deception)], and for other than medical purposes, any controlled substance.

[or]

[8] *Fourth Proposition:* That the defendant was armed with a firearm.

[or]

[9] *Fourth Proposition:* That the defendant personally discharged a firearm during the commission of the offense.

[or]

[10] *Fourth Proposition:* That the defendant personally discharged a firearm during

the commission of the offense that proximately caused [(great bodily harm) (permanent disability) (permanent disfigurement) (death)] to another person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-14(a)(1) to (4), (a)(6) to (10), and 12-13(a)(3) (West 2011) (formerly Ill. Rev. Stat. ch. 38, §§ 12-14(a)(1) to (4), (a)(6), and 12-13(a)(3) (1991)).

Give Instructions 11.55 and 11.57.

When applicable, give Instruction 11.65B, defining “family member.”

When applicable, give Instruction 11.65H, defining “a person responsible for the child’s welfare.”

Insert in the appropriate blanks the name of the victim and the name of the felony.

The element of the offense explained in the Third Proposition, concerning a person responsible for the child’s welfare, was added to the offense of criminal sexual assault by P.A. 85-1209 and should be used only for offenses committed after the effective date of that Act and before the effective date of P.A. 85-1440 which deleted that element. See Committee Note to Instruction 11.55. The term “family member” is defined in Instruction 11.65B. The phrase “a person responsible for the child’s welfare” is defined in Instruction 11.65H.

With regard to the fourth alternative Fourth Proposition, the Committee recommends that the court give the appropriate instruction defining the felony offense alleged as being committed or attempted.

There is no fifth alternative Fourth Proposition. Section 12-13(a)(3) applies to victims under age 18; therefore, section 12-14(a)(5), an aggravating circumstance applying to victims over age 60, cannot apply.

The element of the offense explained in the sixth alternative Fourth Proposition, concerning a victim who was physically handicapped, was added by P.A. 85-691, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

In *People v. Terrell*, 132 Ill. 2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant’s claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature’s silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210; see also 720 ILCS 5/43 through 4-6 (West 2010); Committee Notes to Instructions 5.01A and 5.01B. However, in *People v. Burton*, 201 Ill. App. 3d 116, 558 N.E.2d

1369 (4th Dist. 1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also People v. Smith*, 209 Ill. App. 3d 1043, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In *People v. Simms*, 192 Ill. 2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

The element of the offense explained in the seventh alternative Fourth Proposition, concerning delivery of a controlled substance to a victim, was added by P.A. 90-735, and that portion of the instruction should be used only for offenses committed after the effective date of that Act.

P.A. 91-404 added the eighth, ninth and tenth alternative Fourth Propositions and added the element “other than a firearm” to the first alternative Fourth Proposition. These portions of the instruction should be used only for offenses committed after the effective date of that Act.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.A

11.58B Issues In Aggravated Criminal Sexual Assault—Aggravation By Age

To sustain the charge of aggravated criminal sexual assault, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That the defendant was under 17 years of age and that _____ was under 9 years of age when the act was committed.

[or]

Second Proposition: That the defendant was under 17 years of age and that _____ was at least 9 years of age but under 13 years of age when the act was committed; and

Third Proposition: That the defendant used force or threat of force to commit the act. If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty[.][;] [and]

[*Fourth Proposition:* That _____ did not consent to the act of sexual penetration.]

Committee Note

720 ILCS 5/12-14(b) (West 2011) (formerly Ill. Rev. Stat. ch. 38, § 12-14(b)(1) and (2) (1991)).

Give Instruction 11.57.

See the Committee Note to Instruction 11.57 to distinguish recent revisions to the statute.

Insert in the blanks the name of the victim.

Give the Fourth Proposition only when proof of force or threat of force is an element of the offense and the defense of consent is raised by the evidence. *People v. Coleman*, 166 Ill. App. 3d 242, 520 N.E.2d 55 (1st Dist. 1987).

Also give Instructions 11.63 and 11.63A. See Introduction to Chapter 24–25.00; 720 ILCS 5/12-17(a) (West 2010). However, for a contrary discussion, see *People v. Roberts*, 182 Ill. App. 3d 313, 537 N.E.2d 1080 (1st Dist. 1989), where the court held that it was not plain error to omit the instruction regarding consent because proof of force implicitly establishes lack of consent.

In *People v. Terrell*, 132 Ill. 2d 178, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210; see

also 720 ILCS 5/43 through 4-6 (West 2008); Committee Notes to Instructions 5.01A and 5.01B. However, in *People v. Burton*, 201 Ill. App. 3d 116, 558 N.E.2d 1369 (4th Dist. 1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also People v. Smith*, 209 Ill. App. 3d 1043, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. In *People v. Simms*, 192 Ill. 2d 348, 736 N.E.2d 1092 (2000), the supreme court agreed with Burton that jury instructions on a specific mental state are not required for the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03. However, do not insert that language in any of the Second Propositions of this instruction. *See People v. Griffin*, 247 Ill. App. 3d 1, 616 N.E.2d 1242 (1st Dist. 1993).

11.59 Definition Of Criminal Sexual Abuse

[1] A person commits the offense of criminal sexual abuse when he commits an act of sexual conduct [(by the use of force or threat of force) (and knows that the victim was unable to [(understand the nature of the act) (give knowing consent)])].

[or]

[2] A person commits the offense of criminal sexual abuse when he is 17 years of age or older and commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 13 years of age but under 16 years of age when the act is committed.

[or]

[3] A person commits the offense of criminal sexual abuse when he is under 17 years of age and commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 9 years of age but under 16 years of age when the act is committed.

[or]

[4] A person commits the offense of criminal sexual abuse when he is under 17 years of age and commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 9 years of age but under 17 years of age when the act is committed.

[or]

[5] A person commits the offense of criminal sexual abuse when he commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 13 years of age but under 17 years of age and he is less than 5 years older than the victim.

Committee Note

720 ILCS 5/12-15 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-15 (1991)).

Give Instruction 11.60.

When sexual conduct is charged, give Instruction 11.65D.

When sexual penetration is charged, give Instruction 11.65E.

The offenses defined in paragraphs [2] and [3] were in existence prior to the enactment of P.A. 85-651, and should be used only for offenses committed before the effective date of that Act. The offenses defined in paragraphs [4] and [5] were added by P.A. 85-651, and should be used for offenses which occurred on or after January 1, 1988.

In *People v. Terrell*, 132 Ill. 2d 178, 138 Ill. Dec. 176, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210, 547 N.E.2d at 159, 138 Ill. Dec. at 190; see also Chapter 720, pars. 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in *People v. Burton*, 201 Ill. App. 3d 116, 146 Ill. Dec. 1035, 558 N.E.2d 1369 (4th

Dist. 1990), the court held that Terrell does not require the mental states to be included in the jury instruction. *See also People v. Smith*, 209 Ill. App. 3d 1043, 154 Ill. Dec. 482, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.60 Issues In Criminal Sexual Abuse

To sustain the charge of criminal sexual abuse, the State must prove the following propositions:

[1] *First Proposition:* That the defendant committed an act of sexual conduct upon _____; and

Second Proposition: That the act was committed by force or threat of force[; and

Third Proposition: That _____ did not consent to the act of sexual conduct].

[or]

First Proposition: That the defendant committed an act of sexual conduct upon _____; and

Second Proposition: That the defendant knew that _____ was unable to [(understand the nature of the act) (give knowing consent to the act)].

[or]

[2] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] with _____; and

Second Proposition: That the defendant was 17 years of age or older; and

Third Proposition: That _____ was at least 13 years of age but under 16 years of age when the act was committed [; and

Fourth Proposition: That the defendant did not reasonably believe _____ to be 16 years of age or older].

[or]

[3] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] with _____; and

Second Proposition: That the defendant was under 17 years of age; and

Third Proposition: That _____ was at least 9 years of age but under 16 years of age when the act was committed [; and

Fourth Proposition: That the defendant did not reasonably believe _____ to be 16 years of age or older].

[or]

[4] *First Proposition:* That the defendant committed an act of [(sexual penetration) (sexual conduct)] upon _____; and

Second Proposition: That the defendant was under 17 years of age; and

Third Proposition: That _____ was at least 9 years of age but under 17 years of age when the act was committed[; and

Fourth Proposition: That the defendant did not reasonably believe _____ to be 17 years of age or older].

[or]

[5] *First Proposition:* That the defendant committed an act of [(sexual penetration)

(sexual conduct)] upon _____; and

Second Proposition: That _____ was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was less than 5 years older than _____
[; and

Fourth Proposition: That the defendant did not reasonably believe _____ to be 17 years of age or older].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-15 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-15 (1991)).

Give Instruction 11.59.

See the Committee Note to Instruction 11.59 to distinguish recent additions to the statute.

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under *People v. Coleman*, 166 Ill. App. 3d 242, 117 Ill. Dec. 65, 520 N.E.2d 55 (1st Dist. 1987), to give the bracketed proposition in the first set of propositions. Also give Instructions 11.41 and 11.42. See Chapter 720, Section 12-17(a) and the Introduction to Chapter 24–25.00. However, for a contrary discussion, see *People v. Roberts*, 182 Ill. App. 3d 313, 130 Ill. Dec. 751, 537 N.E.2d 1080 (1st Dist. 1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

When the offense is based in part on the age of the victim and there is evidence that the defendant reasonably believed the victim to be beyond the age classification, it is necessary for the State to prove that the defendant did not have a reasonable belief. Also give Instructions 4.13 and 11.64. See Chapter 720, Section 12-17(b) and the Introduction to Chapter 24–25.00.

In *People v. Terrell*, 132 Ill. 2d 178, 138 Ill. Dec. 176, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210, 547 N.E.2d at 159, 138 Ill. Dec. at 190; see also Chapter 720, pars. 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in *People v. Burton*, 201 Ill. App. 3d 116, 146 Ill. Dec. 1035, 558 N.E.2d 1369 (4th Dist. 1990), the court held that *Terrell* does not require the mental states to be

included in the jury instruction. *See also People v. Smith*, 209 Ill. App. 3d 1043, 154 Ill. Dec. 482, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

Insert in the blanks the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.61 Definition Of Aggravated Criminal Sexual Abuse

[a] A person commits the offense of aggravated criminal sexual abuse when he commits criminal sexual abuse, and

[1] [(displays) (threatens to use) (uses)] [(a dangerous weapon) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)].

[or]

[2] causes bodily harm to the victim.

[or]

[3] the victim is 60 years of age or older when the act is committed.

[or]

[4] the victim is a physically handicapped person when the act is committed.

[or]

[b] A person commits the offense of aggravated criminal sexual abuse when he is a [(family member) (person responsible for the child's welfare)] and commits an act of sexual conduct with a victim who is under 18 years of age when the act is committed.

[or]

[c] A person commits the offense of aggravated criminal sexual abuse when he

[1] is 17 years of age or older and commits an act of sexual conduct with a victim who is under 13 years of age when the act is committed.

[or]

[2] is 17 years of age or older and commits an act of sexual conduct with a victim who is at least 13 years of age but under 17 years of age when the act is committed.

[or]

[3] is under 17 years of age and commits an act of sexual conduct with a victim who is under 9 years of age when the act is committed.

[or]

[4] is under 17 years of age and commits an act of sexual conduct by force or threat of force upon a victim who is at least 9 years of age but under 13 years of age when the act is committed.

[or]

[5] is under 17 years of age and commits an act of sexual conduct by force or threat of force upon a victim who is at least 9 years of age but under 17 years of age when the act is committed.

[or]

[d] A person commits the offense of aggravated criminal sexual abuse when he

[1] commits an act of sexual penetration with a victim who is at least 13 years of age but under 16 years of age and he is at least 5 years older than the victim.

[or]

[2] commits an act of [(sexual penetration) (sexual conduct)] with a victim who is at least 13 years of age but under 17 years of age when the act is committed and he is at least 5 years older than the victim.

[or]

[e] A person commits the offense of aggravated criminal sexual abuse when he commits an act of sexual conduct with a victim who is an institutionalized severely or profoundly mentally retarded person when the act is committed.

[or]

[f] A person commits the offense of aggravated criminal sexual abuse when he commits an act of sexual conduct with a victim who is at least 13 years of age but under 18 years of age when the act is committed and he holds a position of trust, authority, or supervision in relation to the victim.

Committee Note

720 ILCS 5/12-16 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-16 (1991)), amended by P.A. 85-651, effective January 1, 1988; P.A. 85-692, effective January 1, 1988; P.A. 85-1030, effective July 1, 1988; P.A. 85-1209, effective August 30, 1988; P.A. 85-1392, effective January 1, 1989; P.A. 85-1440, effective February 1, 1989; and P.A. 88-99, effective July 20, 1993.

Give Instruction 11.59.

When paragraph [a] or [e] is used, give the appropriate set of propositions in Instruction 11.62.

When paragraph [c] or [d] is used, give the appropriate set of propositions in Instruction 11.62A.

When paragraph [b] or [f] is used, give the appropriate set of propositions in Instruction 11.62B.

In the first series of definitions (paragraph [a]), the material in subparagraphs [3] and [4] were added by P.A. 85-691 and should be used only for offenses committed after the effective date of that Act.

In the second series of definitions (paragraph [b]), the bracketed material addressing a person responsible for the child's welfare was added by P.A. 85-1209 and should be used only for offenses committed after the effective date of that Act and before the effective date of P.A. 85-1440 which deleted that material.

In the third series of definitions (paragraph [c]), the material in subparagraphs [2] and [5] were added by P.A. 85-651 and should only be used for offenses committed after the effective date of that Act. The material in subparagraph [4] should only be used for offenses committed before the effective date of that Act.

In the fourth series of definitions (paragraph [d]), the material in subparagraph [2]

was added by P.A. 85-651 and should only be used for offenses committed after the effective date of that Act. The material in subparagraph [1] should only be used for offenses committed before the effective date of that Act.

The fifth definition (paragraph [e]), concerning the mental disability of the victim, was added by P.A. 85-1392, and should be used only for offenses committed after the effective date of that Act. The phrase “an institutionalized severely or profoundly mentally retarded person” is defined in Instruction 11.68.

The sixth definition (paragraph [f]), which addresses an accused in a position of trust, authority, or supervision, was added by P.A. 85-1030, deleted by P.A. 85-1209, and re-added by P.A. 85-1440, and should be used only for offenses committed between the effective dates of P.A. 85-1030 and P.A. 85-1209, and after the effective date of P.A. 85-1440.

In *People v. Terrell*, 132 Ill. 2d 178, 138 Ill. Dec. 176, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant’s claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature’s silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210, 547 N.E.2d at 159, 138 Ill. Dec. at 190; see also 720 ILCS 5/4-3 through 4-6 (formerly Ill. Rev. Stat. ch. 38, §§ 4-3 through 4-6 (1991)); Committee Notes to Instructions 5.01A and 5.01B. However, in *People v. Burton*, 201 Ill. App. 3d 116, 146 Ill. Dec. 1035, 558 N.E.2d 1369 (4th Dist. 1990), the court held that *Terrell* does not require the mental states to be included in the jury instruction. See also *People v. Smith*, 209 Ill. App. 3d 1043, 154 Ill. Dec. 482, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

P.A. 88-99, effective July 20, 1993, amended Section 12-16(a)(2) to delete the requirement that the accused caused *great* bodily harm to the victim in order for aggravated criminal sexual abuse to be committed. As a result of this amendment, *bodily harm* now suffices to meet the definition of that offense.

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

For an example of the use of this instruction, see Sample Set 27.03.

11.62 Issues In Aggravated Criminal Sexual Abuse—Aggravation By Circumstances

To sustain the charge of aggravated criminal sexual abuse, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual conduct upon _____; and

Second Proposition: That the act was committed by force or threat of force;

[or]

Second Proposition: That the defendant knew that _____ was unable to [(understand the nature of the act) (give knowing consent)];

and

[1] *Third Proposition:* That the defendant [(displayed) (threatened to use) (used)] [(a dangerous weapon) (any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon)]

[or]

[2] *Third Proposition:* That the defendant caused bodily harm to _____

[or]

[3] *Third Proposition:* That _____ was 60 years of age or older when the act was committed

[or]

[4] *Third Proposition:* That _____ was a physically handicapped person when the act was committed[; and

Fourth Proposition: That _____ did not consent to the act of sexual conduct].

[or]

First Proposition: That the defendant committed an act of sexual conduct upon _____; and

Second Proposition: That _____ was an institutionalized severely or profoundly mentally retarded person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16(a)(1), (2), (3), and (4) (West 1992) (formerly Ill. Rev. Stat. ch.

38, §§ 12-16(a)(1), (2), (3), and (4) (1991)), amended by P.A. 85-691, effective January 1, 1988; P.A. 85-1391, effective January 1, 1989; and P.A. 88-99, effective July 20, 1993.

Give Instruction 11.61.

See the Committee Note to Instruction 11.61 to distinguish recent additions to the statute.

When force or threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under *People v. Coleman*, 166 Ill. App. 3d 242, 117 Ill. Dec. 65, 520 N.E.2d 55 (1st Dist. 1987), to give the Fourth Proposition. Also give Instruction 11.63 and 11.63A. See Section 12-17(a) and the Introduction to Chapter 24–25.00. However, for a contrary discussion, see *People v. Roberts*, 182 Ill. App. 3d 313, 130 Ill. Dec. 751, 537 N.E.2d 1080 (1st Dist. 1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

P.A. 88-99, effective July 20, 1993, amended Section 12-16(a)(2) to delete the requirement that the accused caused *great* bodily harm to the victim in order for aggravated criminal sexual abuse to be committed. As a result of this amendment, *bodily harm* now suffices to meet the definition of that offense.

Use applicable bracketed material.

Insert in the blanks the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.62A Issues In Aggravated Criminal Sexual Abuse—Aggravation By Age

To sustain the charge of aggravated criminal sexual abuse, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual conduct with _____; and

[1] *Second Proposition:* That the defendant was 17 years of age or older; and

Third Proposition: That _____ was under 13 years of age when the act was committed.

[or]

[2] *Second Proposition:* That the defendant was 17 years of age or older; and

Third Proposition: That _____ was at least 13 years of age but under 17 years of age when the act was committed; and

Fourth Proposition: That the defendant used force or the threat of force to commit the act.

[or]

[3] *Second Proposition:* That the defendant was under 17 years of age; and

Third Proposition: That _____ was under 9 years of age when the act was committed.

[or]

[4] *Second Proposition:* That the defendant was under 17 years of age; and

Third Proposition: That _____ was at least 9 years of age but under 13 years of age when the act was committed; and

Fourth Proposition: That the defendant used force or the threat of force to commit the act.

[or]

[5] *Second Proposition:* That the defendant was under 17 years of age; and

Third Proposition: That _____ was at least 9 years of age but under 17 years of age when the act was committed; and

Fourth Proposition: That the defendant used force or the threat of force to commit the act.

[or]

First Proposition: That the defendant committed an act of sexual penetration upon _____; and

Second Proposition: That _____ was at least 13 years of age but under 16 years of age when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than _____.

[or]

First Proposition: That the defendant committed an act of [(sexual penetration) (sexual conduct)] upon _____; and

Second Proposition: That _____ was at least 13 years of age but under 17 years of age when the act was committed; and

Third Proposition: That the defendant was at least 5 years older than _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16(c) and (d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-16(c) and (d) (1991)).

Give Instruction 11.61.

See the Committee Note to Instruction 11.61 to distinguish recent additions to the statute.

When force or the threat of force is an element of the offense and the defense of consent is raised by the evidence, it is necessary under *People v. Coleman*, 166 Ill. App. 3d 242, 117 Ill. Dec. 65, 520 N.E.2d 55 (1st Dist. 1987), to give the following instruction as the final proposition:

“Fifth Proposition: That _____ did not consent to the act of sexual conduct.”

Also give Instructions 11.63 and 11.63A. See Chapter 720, Section 12-17(a) and the Introduction to Chapter 24–25.00. However, for a contrary discussion, see *People v. Roberts*, 182 Ill. App. 3d 313, 130 Ill. Dec. 751, 537 N.E.2d 1080 (1st Dist. 1989), where the court held that it was not plain error to omit the instruction on consent because proof of force implicitly establishes lack of consent.

When the defendant is charged with aggravated criminal sexual abuse under Chapter 720, Section 12-16(d) (which, effective January 1, 1988, was amended to make the critical ages 13 to 17 years of age, and not 13 to 16 years of age) and the defense that the defendant reasonably believed the victim to be 17 or 16 years of age or older is raised by the evidence, give the following instruction as the final proposition:

“Fourth Proposition: That the defendant did not reasonably believe _____ to be [(16) (17)] years of age or older.”

Also give Instructions 4.13 and 11.64. See Chapter 720, Section 12-17(b) and the Introduction to Chapter 24–25.00.

In *People v. Terrell*, 132 Ill. 2d 178, 138 Ill. Dec. 176, 547 N.E.2d 145 (1989), the supreme court upheld the constitutional validity of the aggravated criminal

sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that, in the legislature's silence, a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210, 547 N.E.2d at 159, 138 Ill. Dec. at 190; see also Chapter 720, pars. 4-3 through 4-6; Committee Notes to Instructions 5.01A and 5.01B. However, in *People v. Burton*, 201 Ill. App. 3d 116, 146 Ill. Dec. 1035, 558 N.E.2d 1369 (4th Dist. 1990), the court held that *Terrell* does not require the mental states to be included in the jury instruction. See also *People v. Smith*, 209 Ill. App. 3d 1043, 154 Ill. Dec. 482, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault.

Use applicable bracketed material.

Insert in the blanks the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

For an example of the use of this instruction, see Sample Set 27.03.

11.62B Issues In Aggravated Criminal Sexual Abuse—Aggravation By Age When Defendant Is A Family Member Or In A Position Of Responsibility Or Trust

To sustain the charge of aggravated criminal sexual abuse, the State must prove the following propositions:

First Proposition: That the defendant committed an act of sexual conduct with _____; and

Second Proposition: That _____ was under 18 years of age when the act was committed; and

Third Proposition: That the defendant was a [(family member) (person responsible for the child's welfare)].

[or]

First Proposition: That the defendant committed an act of sexual conduct with _____; and

Second Proposition: That _____ was at least 13 years of age but under 18 years of age when the act was committed; and

Third Proposition: That the defendant was 17 years of age or older; and

Fourth Proposition: That the defendant held a position of trust, authority, or supervision in relation to _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-16(b) (1991)).

Give Instruction 11.61.

See the Committee Note to Instruction 11.61 to distinguish recent additions to the statute.

The term “family member” is defined in Instruction 11.65B.

The phrase “person responsible for the child’s welfare” is defined in Instruction 11.65H.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.63 Defense Of Consent

It is a defense to the charge of _____ that _____ consented.

Committee Note

720 ILCS 5/12-17(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-17(a) (1991)).

Give this Instruction when the defense of consent is raised in offenses where proof of force or threat of force is an element under Chapter 38, Sections 12-13 through 12-16 and the issue is raised by the evidence. See Introduction to Chapter 24-25.00.

Give Instruction 11.63A, defining the word “consent.”

Insert in the appropriate blanks the name of the charged offense and the victim’s name.

For an example of the use of this instruction, see Sample Set 27.03.

11.63A Definition Of Consent

The word “consent” means a freely given agreement to the act of [(sexual penetration) (sexual conduct)] in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the defendant [or the victim’s manner of dress] shall not constitute consent.

Committee Note

720 ILCS 5/12-17(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-17(a) (1991)).

See Instruction 11.63.

The bracketed language referring to the victim’s manner of dress was added as a result of P.A. 87-438, effective January 1, 1992, which amended Section 12-17(a).

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.03.

11.64 Defense To Criminal Sexual Abuse And Aggravated Criminal Sexual Abuse

It is a defense to the charge of [(criminal sexual abuse) (aggravated criminal sexual abuse)] that the defendant reasonably believed _____ to be [(16) (17)] years of age or older.

Committee Note

720 ILCS 5/12-17(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-17(b) (1991)).

Give this instruction when the defendant is charged with criminal sexual abuse under Chapter 720, Section 12-15(b), or with aggravated criminal sexual abuse under Chapter 720, Section 12-16(d), and the issue is raised by the evidence. The appropriate age to be chosen from within the brackets should be determined by when the offense occurred as the legislature has amended the underlying statutes by changing the applicable age classifications. See the Committee Notes to Instructions 11.59 and 11.61. Also give Instruction 4.13. See Introduction to Chapter 24-25.00.

Insert in the blank the name of the victim.

11.65 Definition Of Accused

The word “accused” means a person accused of the offense of [(criminal sexual assault) (aggravated criminal sexual assault) (criminal sexual abuse) (aggravated criminal sexual abuse)] [or a person for whose conduct he is legally responsible].

Committee Note

720 ILCS 5/12-12(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-12(a) (1991)).

Use applicable bracketed material.

11.65A Definition Of Bodily Harm

The term “bodily harm” means physical harm and includes, but is not limited to, sexually transmitted disease, pregnancy, and impotence.

Committee Note

720 ILCS 5/12-12(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-12(b) (1991)).

11.65B Definition Of Family Member

The term “family member” means a parent, grandparent, or child, whether by whole-blood, half-blood, or adoption and includes a step-grandparent, step-parent, or step-child.

[The term “family member” also means, where the victim is a child under 18 years of age, an accused who has resided in the household with such child continuously for at least one year.]

Committee Note

720 ILCS 5/12-12(c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-12(c) (1991)).

Use applicable bracketed material.

11.65C Definition Of Force Or Threat Of Force

The term “force or threat of force” means the use of force or violence or the threat of force or violence [including but not limited to [(when the accused threatens to use force or violence [(on the victim) (on any other person)] and the victim under the circumstances reasonably believed that the accused had the ability to execute that threat) (when the accused has overcome the victim by use of [(superior strength) (superior size) (physical restraint) (physical confinement)]]].

Committee Note

720 ILCS 5/12-12(d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-12(d) (1991)).

Use applicable bracketed material.

11.65D Definition Of Sexual Conduct

The term “sexual conduct” means any intentional or knowing touching or fondling by [(the victim) (the accused)], either directly or through the clothing, of [(the sex organ) (anus) (breast)] of [(the victim) (the accused)] [any part of the body of a child under 13 years of age], for the purpose of sexual gratification or arousal of the victim or the accused.

Committee Note

720 ILCS 5/12-12(e) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-12(e) (1991)).

Sexual conduct with a victim requires actual physical contact between the victim and accused, not merely sexual conduct in the presence of the victim. *People v. Gann*, 141 Ill. App. 3d 34, 95 Ill. Dec. 362, 489 N.E.2d 924 (3d Dist. 1986).

Use applicable bracketed material.

11.65E Definition Of Sexual Penetration

The term “sexual penetration” means any

[1] contact, however slight, between the sex organ or anus of one person and [(an object) (the [(sex organ) (mouth) (anus)] of another person)].

[or]

[2] intrusion, however slight, of any part of [(the body of one person) (any animal) (any object)] into the [(sex organ) (anus)] of another person[, including but not limited to [(cunnilingus) (fellatio) (anal penetration)]]]. [Evidence of emission of semen is not required to prove sexual penetration.]

Committee Note

720 ILCS 5/12-12(f) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-12(f) (1991)), amended by P.A. 88-167, effective January 1, 1994.

The statutory definition of sexual penetration, unlike that of sexual conduct upon which most of the sexual abuse offenses are based, does not contain a mental state. Therefore, under *People v. Terrell*, 132 Ill. 2d 178, 138 Ill. Dec. 176, 547 N.E.2d 145 (1989), the mental states of knowledge, intention, and recklessness are assigned to the offenses based on sexual penetration and, accordingly, those mental states are set out in the appropriate definitional and issues instructions. *See also People v. Williams*, 191 Ill. App. 3d 269, 138 Ill. Dec. 441, 547 N.E.2d 608 (4th Dist. 1989); see also 720 ILCS 5/4-3 through 4-6 (formerly Ill. Rev. Stat. ch. 38, §§ 4-3 through 4-6 (1991)), and the Committee Notes to Instructions 5.01A and 5.01B.

P.A. 88-167, effective January 1, 1994, amended 720 ILCS 5/12-12(f), defining “sexual penetration,” by adding kinds of “contact,” as described in bracketed paragraph [1] of this instruction.

A victim’s finger can be an “object” within the statutory definition of sexual penetration. *People v. Scott*, 271 Ill. App. 3d 307, 313, 207 Ill. Dec. 630, 633, 648 N.E.2d 86, 89 (1st Dist. 1994).

People v. Scott also held that when only the defendant and the victim are involved in offenses based on sexual penetration, the defendant cannot be held liable under an accountability theory. *Scott*, 271 Ill. App. 3d at 314, 648 N.E.2d at 90, 207 Ill. Dec. at 634.

Use applicable bracketed material.

11.65F : Definition Of Victim

The term “victim” means a person [(alleging) (alleged)] to have been subjected to the offense[s] of [(criminal sexual assault) (aggravated criminal sexual assault) (criminal sexual abuse) (aggravated criminal sexual abuse)].

Committee Note

720 ILCS 5/12-12(g) (West 1995) (formerly Ill. Rev. Stat. ch. 38, § 12-12(g) (1991)).

Although Section 12-12(g) defines “victim” as a person “alleging” to have been sexually assaulted, the Committee believes the definition must include those “alleged” to have been sexually assaulted, such as infants or toddlers, who are not capable of making such allegations.

Use applicable bracketed material.

11.65G Definition Of Severely Or Profoundly Intellectually Disabled Person

The phrase “severely or profoundly intellectually disabled person” means a person

[1] whose intelligence quotient does not exceed 40.

[or]

[2] whose intelligence quotient does not exceed 55 and the person suffers from significant mental illness to the extent that the person’s ability to exercise rational judgment is impaired.

Committee Note

Instruction and Committee Note Approved May 24, 2013.

720 ILCS 5/2-10.1 (West 2013), effective January 1, 2012.

In P.A. 97-277, the Illinois General Assembly substituted the term “intellectually disabled person” for “mentally retarded person” in all statutes which use the term “mentally retarded.” In doing so, the General Assembly declared that this substitution was done without any intent to change the substantive right, responsibilities, coverage, eligibility, or definitions referred to in the amended provisions represented in P.A. 97-277. Accordingly, the Committee believes that the term “intellectually disabled” should be used in place of “mentally retarded” even where the offense occurred before the effective date of P.A. 97-277.

11.65H Definition Of A Person Responsible For The Child's Welfare

The phrase "a person responsible for the child's welfare" means the child's guardian, foster parent, elementary or secondary school teacher, or any other person responsible for the child's care at the time the act was committed.

Committee Note

720 ILCS 5/12-13(a)(3) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-13(a)(3) (1991)).

See Instruction 11.55.

11.66 Statements Admitted Under Section 115-10 Of The Code Of Criminal Procedure

You have before you evidence that _____ made [(a statement) (statements)] concerning [(an) (the)] offense[s] charged in this case. It is for you to determine [whether the statement[s] [(was) (were)] made, and, if so,] what weight should be given to the statement[s]. In making that determination, you should consider the age and maturity of _____, the nature of the statement[s], [and] the circumstances under which [(a) (the)] statement[s] [(was) (were)] made[, and _____].

Committee Note

725 ILCS 5/115-10(c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 115-10(c) (1991)).

P.A. 85-837, effective January 1, 1988, significantly changed Section 115-10 of the Code of Criminal Procedure. That Section provides for the admissibility under certain circumstances of out-of-court statements made by a child under the age of 13 who is the alleged victim of criminal sexual assault, aggravated criminal sexual assault, criminal sexual abuse, or aggravated criminal sexual abuse (Chapter 720, Sections 12-13 through 12-16).

As amended, Section 115-10(c) now provides that when such a statement is admitted under that Section, the jury “shall” be instructed as provided in this instruction.

The Committee takes no position on whether this instruction should be given orally to the jury at the time an out-of-court statement of the alleged victim is received in evidence.

Insert in the first two blanks the name of the child whose statement was received into evidence.

Insert in the last blank any other relevant factor concerning the weight and credibility of the statement.

Use applicable bracketed material.

11.67 Definition Of Criminal Transmission Of HIV (Human Immunodeficiency Virus)

A person commits the offense of criminal transmission of HIV when he, knowing that he is infected with HIV,

[1] engages in intimate contact with another.

[or]

[2] [(transfers) (donates) (provides)] his [(blood) (tissue) (semen) (organs) (potentially infectious body fluids)] for [(transfusion) (transplantation) (insemination) (administration)] to another.

[or]

[3] [(dispenses) (delivers) (exchanges) (sells) (transfers)] nonsterile [(intravenous) (intramuscular)] drug paraphernalia to another.

[It is not necessary that an infection with HIV actually result from that conduct.]

Committee Note

720 ILCS 5/12-16.2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-16.2 (1991)).

Give Instructions 11.67B and 11.68.

When applicable, give Instruction 11.67C, defining the phrase “intimate contact with another,” and Instruction 11.67D, defining the phrase “intravenous or intramuscular drug paraphernalia.” Although the name of the offense implies otherwise, transmission of the disease is not an element of the crime. See Section 12-16.2(c). The last bracketed sentence of the instruction may be included when necessary to avoid confusion.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.67A Affirmative Defense To Criminal Transmission Of HIV

It is a defense to the charge of criminal transmission of HIV that the person exposed to HIV consented to the _____ knowing that the defendant was infected with HIV and knowing that this conduct could result in an infection with HIV.

Committee Note

720 ILCS 5/12-16(d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-16(d) (1991)).

Give this instruction when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Give this instruction when the issue is raised by the evidence. See Chapter 720, Section 3-2 and the Introduction to Chapter 24-25.00.

Insert in the blank a description of the conduct forming the basis of the charge. For example, if the defendant is charged with committing the offense by engaging in intimate contact with another, insert the phrase “intimate contact with the defendant” in the blank. If the defendant is charged with donating blood for transfusion to another, insert the phrase “donation of defendant’s blood for transfusion” in the blank. If the defendant is charged with delivery of nonsterile intramuscular drug paraphernalia to another, insert the phrase “delivery of the nonsterile intramuscular drug paraphernalia” in the blank.

11.67B Definition Of HIV

The term "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome.

Committee Note

720 ILCS 5/12-16.2(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-16.2(b) (1991)).

11.67C Definition Of Intimate Contact With Another

The phrase “intimate contact with another” means the exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV.

Committee Note

720 ILCS 5/12-16(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-16(b) (1991)).

11.67D Definition Of Intravenous Or Intramuscular Drug Paraphernalia

The phrase "[intravenous] (intramuscular)] drug paraphernalia" means any equipment, product, or material which is peculiar to and marketed for use in injecting a substance into the human body.

Committee Note

720 ILCS 5/12-16.2(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-16.2(b) (1991)).

11.68 Issues In Criminal Transmission Of HIV (Human Immunodeficiency Virus)

To sustain the charge of criminal transmission of HIV, the State must prove the following propositions:

First Proposition: That the defendant engaged in intimate contact with another;

[or]

First Proposition: That the defendant [(transferred) (donated) (provided)] his [(blood) (tissue) (semen) (organs) (potentially infectious body fluids)] for [(transfusion) (transplantation) (insemination) (administration)] to another;

[or]

First Proposition: That the defendant [(dispensed) (delivered) (exchanged) (sold) (transferred)] nonsterile [(intravenous) (intramuscular)] drug paraphernalia to another;

and

Second Proposition: That when the defendant did so, he knew he was infected with HIV; and

Third Proposition: That _____ did not consent to the _____ knowing that the defendant was infected with HIV and knowing that this conduct could result in an infection with HIV].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-16.2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-16.2 (1991)).

Give Instructions 11.67 and 11.67B.

When applicable, give Instruction 11.67C, defining the phrase “intimate contact with another,” and Instruction 11.67D, defining the phrase “intravenous or intramuscular drug paraphernalia.”

Section 12-16.2(c) specifically provides that transmission of the disease is not an element of the offense.

Give the Third Proposition when the issue is raised by the evidence. When there is sufficient evidence to raise the affirmative defense, the burden is on the State to overcome the defense beyond a reasonable doubt. See Chapter 720, Section 3-2 and the Introduction to Chapter 24–25.00.

Insert in the first blank in the Third Proposition the name of the person exposed

to the HIV infection, and in the second blank a description of the conduct forming the basis of the charge. For examples, see the Committee Note to Instruction 11.67A.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.69 Definition Of Abuse Of A Long Term Care Facility Resident

A person commits the offense of abuse of a long term care facility resident when he [(knowingly) (intentionally)] [(causes any physical or mental injury to) (commits a sexual offense upon)] a long term care facility resident.

Committee Note

720 ILCS 5/12-19 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-19 (1991)).
Give Instructions 11.69A and 11.70.

When the defendant is charged with committing a sexual offense upon a long term care facility resident, the definition of the specific sexual offense charged must be given.

Section 12-19 contains certain exceptions to criminal liability. That section does not apply to a physician or nurse providing care within the scope of his or her professional judgment and within accepted standards of care. The section also does not apply to medical supervision or control of the care or treatment of residents of a facility operated for those who rely upon treatment by prayer or spiritual means. It will be necessary to give additional instructions if the defendant relies upon either of these exceptions.

Use applicable bracketed material.

11.69A Definition Of Long Term Care Facility

The phrase “long term care facility” means a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for three or more persons not related to the owner by blood or marriage.

Committee Note

720 ILCS 5/12-19(d)(7) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-19(d)(7) (1991)).

For a definition of the word “owner” of a long term care facility, see Chapter 720, Section 12-19(d)(5), and Chapter 210, Section 45/1-119.

11.70 Issues In Abuse Of A Long Term Care Facility Resident

To sustain the charge of abuse of a long term care facility resident, the State must prove the following propositions:

First Proposition: That [(victim)] was a long term care facility resident; and

Second Proposition: That the defendant [(knowingly) (intentionally)] caused [(physical harm) (mental injury)] to [(victim)].

[or]

Second Proposition: That the defendant [(knowingly) (intentionally)] committed that offense of [(sexual offense)] upon [(victim)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-19 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-19 (1991)).

Give Instruction 11.69.

Insert in the appropriate blanks the name of the victim, and when applicable, the type of sexual offense allegedly committed.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.71 Definition Of Gross Neglect Of A Long Term Care Facility Resident

A person commits the offense of gross neglect of a long term care facility resident when he recklessly fails to provide adequate [(medical) (personal)] [(care) (maintenance)] to a long term care facility resident and that failure results in [(physical injury) (mental injury) (the deterioration of a long term care facility resident's [(physical) (mental)] condition)].

Committee Note

720 ILCS 5/12-19 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-19 (1991)).

Give Instructions 11.72, 11.69A, and 5.01.

Section 12-19 contains certain exceptions to criminal liability. That section does not apply to a physician or nurse providing care within the scope of his or her professional judgment and within accepted standards of care. The section also does not apply to medical supervision or control of the care or treatment of residents of a facility operated for those who rely upon treatment by prayer or spiritual means. It will be necessary to give additional instructions if the defendant relies upon either of these exceptions.

Use applicable bracketed material.

11.72 Issues In Gross Neglect Of A Long Term Care Facility Resident

To sustain the charge of gross neglect of a long term care facility resident, the State must prove the following propositions:

First Proposition: That the defendant recklessly failed to provide adequate [(medical) (personal)] [(care) (maintenance)] to _____; and

Second Proposition: That the defendant's failure resulted in [(physical injury to _____) (mental injury to _____) (the deterioration of _____'s [(physical) (mental)] condition)]; and

Third Proposition: That _____ was a long term care facility resident.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your considerations of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-19 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-19 (1991)).

Give Instruction 11.71.

Insert in the blanks the name of the alleged victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.73 Definition Of Sale Of Body Parts

A person commits the offense of sale of body parts when he knowingly [(buys) (sells) (offers to buy) (offers to sell)] [(a human body) (any part of a human body)].

Committee Note

720 ILCS 5/12-20 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-20 (1991)).

Give Instruction 11.74.

Section 12-20(b) contains several exceptions to the offense of the sale of body parts. The statute does not prohibit: (1) an anatomical gift made pursuant to statute; (2) the removal and use of a human cornea pursuant to statute; (3) reimbursement of the actual expenses incurred by a living donor in donating an organ, tissue, or other body part; (4) payments provided under a plan of insurance or other health care coverage; (5) reimbursement of reasonable costs associated with the removal, storage, or transportation of a human body or body part donated for medical or scientific purposes; (6) purchase or sale of blood, plasma, blood products or derivatives, or other body fluids, or human hair; or (7) purchase or sale of drugs, reagents or other substances made from human bodies or body parts, for use in medical or scientific research, treatment, or diagnosis. If the defendant relies upon any of those exceptions, it will be necessary to give additional instructions.

Use applicable bracketed material.

11.74 Issue In Sale Of Body Parts

To sustain the charge of sale of body parts, the State must prove the following proposition:

That the defendant knowingly [(bought) (sold) (offered to buy) (offered to sell)] [(a human body part) (any part of a human body)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-20 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-20 (1991)).

Give Instruction 11.73.

Section 12-20 contains several exceptions to the offense of the sale of body parts, and additional instructions must be given when the defendant relies upon one or more of those exceptions. See Committee Note to Instruction 11.73.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.75 Definition Of Criminal Neglect Of An Elderly Or Disabled Person

A person commits the offense of criminal neglect of [(an elderly) (a disabled)] person when he is a caregiver and he knowingly

[1] performs acts which cause the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[2] fails to perform acts which he knows or reasonably should know are necessary to maintain or preserve the life or health of the [(elderly) (disabled)] person and such failure causes the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[3] abandons the [(elderly) (disabled)] person.

Committee Note

720 ILCS 5/12-21(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-21(a) (1991)), added by P.A. 86-153, effective January 1, 1990, amended by P.A. 86-1028, effective February 5, 1990, and P.A. 87-1072, effective January 1, 1993.

Give Instructions 11.75A and 11.76.

Give either Instruction 11.75B, defining the term "elderly person," or 11.75C, defining the term "disabled person."

When using the third alternative, give Instruction 11.75D, defining the term "abandon."

Section 12-21(d) and (e) set forth exceptions to the offense of criminal neglect of an elderly or disabled person. The statute does not apply to a person who has made a good faith effort to provide for the health and personal care of an elderly or disabled person, but through no fault of his own has been unable to provide such care. The statute also does not prohibit a person from providing treatment by spiritual means through prayer alone and care consistent therewith in lieu of medical care and treatment in accordance with the tenets and practices of any church or religious denomination of which the elderly or disabled person is a member. It will be necessary to give additional instructions if the defendant relies upon either of those exceptions.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.75A Definition Of Caregiver—Criminal Neglect

The word “caregiver” means a person who has a duty to provide for [(an elderly) (a disabled)] person’s health and personal care, at such person’s place of residence, including but not limited to, food and nutrition, shelter, hygiene, prescribed medication, and mental care and treatment, and includes

[1] a [(parent) (spouse) (adult child) (relative by blood or marriage)] who [(resides) (resides in the same building)] with and regularly visits the [(elderly) (disabled)] person and knows or reasonably should know of such person’s physical or mental impairment, and knows or should know that such person is unable to adequately provide for his own health and personal care.

[or]

[2] a person who is employed by the [(elderly) (disabled)] person or by another to reside with or regularly visit the [(elderly) (disabled)] person and provide for such person’s health and personal care.

[or]

[3] a person who has agreed for consideration to reside with or regularly visit the [(elderly) (disabled)] person and provide for such person’s health and personal care.

[or]

[4] a person who has been appointed by a private or public agency or by a court of competent jurisdiction to provide for the [(elderly) (disabled)] person’s health and personal care.

Committee Note

720 ILCS 5/12-21(b)(3) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-21(b)(3) (1991)).

Section 12-21(b)(3) sets forth an exception to the offense of criminal neglect of an elderly or disabled person. The statute does not apply to a long-term care facility licensed or certified under the Nursing Home Care Act (Chapter 210, Section 45/1-119), or any administrative, medical, or other personnel of such a facility, or health care provider who is licensed under the Medical Practice Act (Chapter 225, Section 60/1) and who renders care in the ordinary course of his profession. It will be necessary to give additional instructions if the defendant relies on this exception.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.75B Definition Of Elderly Person—Criminal Neglect

The term “elderly person” means a person 60 years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that such person is incapable of adequately providing for his own health and personal care.

Committee Note

720 ILCS 5/12-21(b)(1) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-21(b)(1) (1991)).

11.75C Definition Of Disabled Person—Criminal Neglect

The term “disabled person” means a person who suffers from a permanent physical or mental impairment, resulting from disease, injury, functional disorder, or congenital condition, which renders such person incapable of adequately providing for his own health and personal care.

Committee Note

720 ILCS 5/12-21(b)(2) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-21(b)(2) (1991)).

11.75D Definition Of Abandon—Criminal Neglect

The term “abandons” means to desert or knowingly forsake [(an elderly) (a disabled)] person under circumstances in which a reasonable person would continue to provide care and custody.

Committee Note

720 ILCS 5/12-21(b)(4) (West 1992), added by P.A. 87-1072, effective January 1, 1993.

Use applicable bracketed material.

11.76 Issues In Criminal Neglect Of An Elderly Or Disabled Person

To sustain the charge of criminal neglect of [(an elderly) (a disabled)] person, the State must prove the following propositions:

First Proposition: That the defendant was a caregiver; and

[1] *Second Proposition:* That the defendant knowingly performed acts which caused the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[2] *Second Proposition:* That the defendant knowingly failed to perform acts which he knew or should have known were necessary to maintain or preserve the life or health of the [(elderly) (disabled)] person and such failure caused the [(elderly) (disabled)] person's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate.

[or]

[3] *Second Proposition:* That the defendant knowingly abandoned the [(elderly) (disabled)] person.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-21(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-21(a) (1991)), added by P.A. 86-153, effective January 1, 1990; amended by P.A. 86-1028, effective February 5, 1990; and P.A. 87-1072, effective January 1, 1993.

Give Instruction 11.75.

Use the applicable Second Proposition and bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.77 Definition Of Violation Of Order Of Protection

A person commits the offense of violation of an order of protection when, having been served notice of the contents of an order of protection, or otherwise having acquired actual knowledge of the contents of the order, he [(commits an act which was prohibited by a court) (fails to commit an act which was ordered by a court)] in an order of protection.

Committee Note

720 ILCS 5/12-30 (West 2011) (formerly Ill. Rev. Stat. ch. 38, § 12-3-(1991)). See also Domestic Violence Act, Chapter 750, section 60/101 *et seq.*, as amended by P.A. 86-542, effective January 1, 1990.

When applicable, give Instruction 5.01C, defining “actual knowledge.”

Give Instruction 11.78.

Section 12-30 proscribes acts committed in violation of a “remedy” in a valid order of protection. The Domestic Violence Act (Chapter 750, section 60/214) defines the phrase “remedy in an order of protection” by listing all of the types of directives that can be included in an order of protection. While that definition presumably limits the types of orders that can be entered under the Domestic Violence Act, the Committee believes that the court, and not the jury, is to determine whether an order of protection is valid or whether a particular directive of such an order falls within the definition of remedy and that the jury should not be instructed on the extensive definition of remedy. Without its technical definition, the word “remedy” could be confusing to the jury, and has, therefore, been omitted in defining the offense. Moreover, since the court and not the jury will determine whether an order of protection is valid, the word “valid” has been omitted from instructions on this offense.

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78 Issues In Violation Of Order Of Protection

To sustain the charge of violation of an order of protection, the State must prove the following propositions:

First Proposition: That the defendant _____; and

Second Proposition: That an order of protection prohibited the defendant from performing [(that act) (those acts)];

[(or)]

Second Proposition: That an order of protection directed the defendant to perform [(that act) (those acts)];

and

Third Proposition: That the order of protection was in effect at the time the defendant _____; and

Fourth Proposition: That at the time the defendant _____, he had been served notice of the contents of an order of protection or otherwise had acquired actual knowledge of the contents of the order.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-30 (West 2011) (formerly Ill. Rev. Stat. ch. 38, § 12-3-(1991)). See also Domestic Violence Act, Chapter 750, section 60/101 *et seq.*, as amended by P.A. 86-542, effective January 1, 1990.

When applicable, give Instruction 5.01C, defining “actual knowledge.”

Give Instruction 11.77.

Insert in the blanks the specific act or failure to act alleged in the charging instrument.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

Use applicable bracketed material.

The brackets are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78A Definition Of Family Or Household Member—Violation Of Order Of Protection

The phrase “family or household member” means spouses, former spouses, parents, children, stepchildren, and other persons related by blood or marriage, persons who share or formerly shared a common dwelling, and persons who have or allegedly have a child in common. [In the case of high-risk adult with disabilities, the phrase “family or household member” also includes any person who has the responsibility for a high-risk adult as a result of a family relationship or who has assumed responsibility for all or a portion of the care of a high-risk adult with disabilities voluntarily, or by express or implied contract, or by court order.]

Committee Note

750 ILCS 60/103(5), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase “family or household member” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

Use the bracketed language only when the case involves an order of protection entered to protect a high-risk adult with disabilities, and in such a case, give Instruction 11.78B, defining the phrase “high-risk adult with disabilities.”

See Instruction 11.78.

11.78B Definition Of High-Risk Adult With Disabilities—Violation Of Order Of Protection

The phrase “high-risk adult with disabilities” means a person of age 18 or over whose physical or mental disability impairs his ability to seek or obtain protection from abuse, neglect, or exploitation.

Committee Note

750 ILCS 60/103(8), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase “high-risk adult with disabilities” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78, or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

11.78C Definition Of Abuse—Violation Of Order Of Protection

The word “abuse” means [(physical abuse) (harassment) (intimidation of a dependent) (interference with personal liberty) (wilful deprivation)] [but does not include reasonable direction of a minor child by a parent or person acting in the place of a parent].

Committee Note

750 ILCS 60/103(1), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the word “abuse” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78, in the portion of the order of protection allegedly violated, or in another definition. See, e.g., Instruction 11.78B, defining the phrase “high-risk adult with disabilities.”

Give Instructions 11.78E, 11.78F, 11.78G, 11.78I, and 11.78J, whenever the terms defined in those instructions are included in this instruction.

See Instruction 11.78.

Use applicable bracketed material.

11.78D Definition Of Exploitation—Violation Of Order Of Protection

The word “exploitation” means the illegal[, including tortious,] [(use of a high-risk adult with disabilities) (use of the assets or resources of a high-risk adult with disabilities)], including

[1] the misappropriation of assets or resources of a high-risk adult with disabilities [(by undue influence) (by breach of a fiduciary relationship) (by fraud) (by deception) (by extortion)].

[or]

[2] the use of the assets or resources of a high-risk adult with disabilities in a manner contrary to law.

Committee Note

750 ILCS 60/103(5), amended by P.A. 86-542, effective January 1, 1990.

Give Instruction 11.78B, defining the phrase “high-risk adult with disabilities.”

Give this instruction when the word “exploitation” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78E Definition Of Harassment—Violation Of Order Of Protection

The word “harassment” means knowing conduct which would cause a reasonable person emotional distress, which does cause emotional distress to the petitioner, and which is not necessary to accomplish a purpose that is reasonable under the circumstances.

Committee Note

750 ILCS 60/103(8), amended by P.A. 86-542, effective January 1, 1990. Give this instruction when the word “harassment” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

In addition to the above definition, the Domestic Violence Act creates a mandatory presumption, to be rebutted by a preponderance of the evidence, that certain types of conduct cause emotional distress. See Chapter 40, Section 2311-3(6). Because of constitutional difficulties that would arise if that presumption were applied in criminal cases, the Committee believes that no instruction on the presumption should be given in a criminal prosecution for violation of an order of protection. See *Mullaney v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d 508 (1975); *County Court v. Allen*, 442 U.S. 140, 99 S. Ct. 2213, 60 L. Ed. 2d 777 (1979); *Sandstrom v. Montana*, 442 U.S. 510, 99 S. Ct. 2450, 61 L. Ed. 2d 39 (1979).

See Instruction 11.78.

11.78F Definition Of Interference With Personal Liberty—Violation Of Order Of Protection

The phrase “interference with personal liberty” means committing or threatening physical abuse, harassment, intimidation, or wilful deprivation so as to compel another [(to engage in conduct from which he has a right to abstain) (to refrain from conduct in which he has a right to engage)].

Committee Note

750 ILCS 60/103(9), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase “interference with personal liberty” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Use applicable bracketed material.

See *People v. Marquis*, 54 Ill. App. 3d 209, 11 Ill. Dec. 918, 369 N.E.2d 372 (4th Dist. 1977), concerning the required mental state of wilfulness; see also Chapter 38, Section 4-5.

11.78G Definition Of Intimidation Of A Dependent—Violation Of Order Of Protection

The phrase “intimidation of a dependent” means subjecting a person who is dependent because of age, health, or disability to [(participate in) (witness)] [(physical force against another) (physical confinement or restraint of another which constitutes physical abuse)].

Committee Note

750 ILCS 60/103(10), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the phrase “intimidation of a dependent” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

Give Instruction 11.78I, defining the term “physical abuse” when the jury is instructed on physical confinement or restraint constituting physical abuse.

See Instruction 11.78.

Use applicable bracketed material.

11.78H Definition Of Neglect—Violation Of Order Of Protection

The word “neglect” means the failure to exercise that degree of care toward a high-risk adult with disabilities which a reasonable person would exercise under the circumstances and includes

[1] the failure to take reasonable steps to protect a high-risk adult with disabilities from acts of abuse.

[or]

[2] the repeated, careless imposition of unreasonable confinement.

[or]

[3] the failure to provide food, shelter, clothing, and personal hygiene to a high-risk adult with disabilities who requires such assistance.

[or]

[4] the failure to provide medical and rehabilitative care for the physical and mental health needs of a high-risk adult with disabilities.

[or]

[5] the failure to protect a high-risk adult with disabilities from health and safety hazards.

Committee Note

750 ILCS 60/103(11), amended by P.A. 86-542, effective January 1, 1990.

Give Instruction 11.78B, defining the phrase “high-risk adult with disabilities.”

Give this instruction when the word “neglect” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78I Definition Of Physical Abuse—Violation Of Order Of Protection

The term “physical abuse” [includes sexual abuse and] means

[1] knowing or reckless use of physical force, confinement, or restraint.

[or]

[2] knowing, repeated, and unnecessary sleep deprivation.

[or]

[3] knowing or reckless conduct which creates an immediate risk of physical harm.

Committee Note

750 ILCS 60/103(14), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction when the term “physical abuse” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78, in the portion of the order of protection allegedly violated, or in another definition upon which the jury is to be instructed. See, e.g., Instructions 11.78C, 11.78F, and 11.78G.

See Instruction 11.78.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.78J Definition Of Wilful Deprivation—Violation Of Order Of Protection

The term “wilful deprivation” means wilfully denying a person who, because of [(age) (health) (disability)], requires [(medication) (medical care) (shelter) (food) (a therapeutic device) (_____)], and the denial exposes that person to the risk of physical, mental, or emotional harm, except with regard to medical care or treatment when the dependent person has expressed an intent to forego such medical care or treatment.

Committee Note

750 ILCS 60/103(15), amended by P.A. 86-542, effective January 1, 1990.

Give this instruction whenever the term “wilful deprivation” is used either in the description of the act or failure to act which has been inserted in Instruction 11.78 or in the portion of the order of protection allegedly violated.

See Instruction 11.78.

Insert in the blank any other type of physical assistance required by the person who allegedly has been deprived.

Use applicable bracketed material.

11.79 Definition Of Inducement To Commit Suicide—Coercing A Suicide

A person commits the offense of inducement to commit suicide when he coerces another to commit suicide and that person [(commits) (attempts to commit)] suicide as a direct result of the coercion, and the defendant exercises substantial control over that person through [(control of that person's physical location or circumstances) (use of psychological pressure) (use of actual or ostensible religious, political, social, philosophical, or other principles)].

Committee Note

720 ILCS 5/12-31(a)(1) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-31 (1991)), added by P.A. 86-980, effective July 1, 1990, and amended by P.A. 87-1167, effective January 1, 1993. P.A. 87-1167 added the phrase “or attempts to commit” suicide to Section 12-31.

Give Instruction 11.80.

If the phrase “attempts to commit suicide” is used, then give Instruction 11.79A, defining that phrase.

P.A. 88-392, effective August 20, 1993, added a new subsection to this offense (Section 12-31(a)(2)) that, while retaining the name of inducement to commit suicide, is essentially an entirely new offense, focusing on acts which assist a person in committing suicide. Thus, the Committee decided to provide separate definitional and issues instructions for that new offense, Instructions 11.79X and 11.80X, and to call that new offense “Inducement To Commit Suicide—Providing the Means or Participating in a Physical Act.” Similarly, the Committee modified the title of this instruction by adding the phrase “—Coercing a Suicide.”

Use applicable bracketed material.

11.79A Definition Of Attempts To Commit Suicide—Inducement To Commit Suicide

The phrase “attempts to commit suicide” means any act done with the intent to commit suicide that constitutes a substantial step toward commission of suicide.

Committee Note

720 ILCS 5/12-31 (West Supp. 1993), amended by P.A. 87-1167, effective January 1, 1993. P.A. 87-1167 added the phrase “or attempts to commit” suicide to Section 12-31.

Because Section 12-31, which contains this definition, states that “attempts to commit suicide” has the above meaning “[f]or the purposes of Section [12-31]” the Committee cautions that this definition may not apply to prosecutions other than for inducement to commit suicide.

11.79X Definition Of Inducement To Commit Suicide—Providing The Means Or Participating In A Physical Act

A person commits the offense of inducement to commit suicide when, with knowledge that another person intends to [(commit) (attempt to commit)] suicide, he intentionally [(offers and provides the physical means) (participates in a physical act)] by which another person [(commits) (attempts to commit)] suicide.

Committee Note

720 ILCS 5/12-31(a)(2) (West Supp. 1993), added by P.A. 88-392, effective August 20, 1993.

Give Instruction 11.80X.

If the phrase “attempts to commit suicide” is used, then give Instruction 11.79A, defining that phrase.

P.A. 88-392, effective August 20, 1993, added a new subsection to Section 12-31 that, while retaining the name of inducement to commit suicide, is essentially an entirely new offense, focusing on acts which assist a person in committing suicide. Thus, the Committee decided to provide these separate definitional and issues instructions for this new offense called “Inducement To Commit Suicide—Providing the Means or Participating in a Physical Act.” Similarly, the Committee modified the title of Instructions 11.79 and 11.80 by adding the phrase “—Coercing a Suicide.”

Use applicable bracketed material.

11.80 Issues In Inducement To Commit Suicide—Coercing A Suicide

To sustain the charge of inducement to commit suicide, the State must prove the following propositions:

First Proposition: That the defendant coerced _____ to commit suicide; and

Second Proposition: That _____ [(committed) (attempted to commit)] suicide as a direct result of the defendant's coercion; and

Third Proposition: That the defendant exercised substantial control over _____ through

[1] control of the physical location or circumstances of _____.

[or]

[2] use of psychological pressure.

[or]

[3] use of actual or ostensible religious, political, social, philosophical, or other principles.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-31(a)(1) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-31 (1991)), added by P.A. 86-980, effective July 1, 1990, and amended by P.A. 87-1167, effective January 1, 1993. P.A. 87-1167 added the phrase "or attempts to commit" suicide to Section 12-31.

Give Instruction 11.79.

If the phrase "attempts to commit suicide" is used, then give Instruction 11.79A, defining that phrase.

Insert in the blank the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

11.80X Issues In Inducement To Commit Suicide—Providing The Means Or Participating In A Physical Act

To sustain the charge of inducement to commit suicide, the State must prove the following propositions:

First Proposition: That the defendant intentionally [(offered and provided the physical means) (participated in a physical act)] by which _____ [(committed) (attempted to commit)] suicide; and

Second Proposition: That the defendant knew that _____ intended to [(commit) (attempt to commit)] suicide.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-31(a)(2) (West Supp. 1993), added by P.A. 88-392, effective August 20, 1993.

Give Instruction 11.79X.

If the phrase “attempts to commit suicide” is used, then give Instruction 11.79A, defining that phrase.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.81 Ritual Mutilation

A person commits the offense of ritual mutilation when he [(intentionally) (knowingly) (recklessly)] mutilates, dismembers, or tortures another person as part of a ceremony, rite, initiation, observance, performance, or practice,

[1] and the victim did not consent.

[or]

[2] under such circumstances that the defendant knew or should have known that the victim was unable to render effective consent.

Committee Note

720 ILCS 5/12-32 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-32 (1991)).

Give Instruction 11.82.

Use the mental state that conforms to the allegation in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

The offense of ritual mutilation does not include the practice of circumcision or a ceremony, rite, initiation, observance, or performance related thereto. See Section 12-32(c).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

11.82 Issues In Ritual Mutilation

To sustain the charge of ritual mutilation, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] mutilated, dismembered, or tortured _____; and

Second Proposition: That the mutilation, dismemberment, or torture occurred as part of a ceremony, rite, initiation, observance, performance, or practice; and

Third Proposition: That _____ did not consent to the mutilation, dismemberment, or torture.

[or]

Third Proposition: That defendant knew or should have known that under the circumstances present, _____ was unable to render effective consent to the mutilation, dismemberment, or torture.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-32 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 12-32 (1991)), added by P.A. 86-864, effective January 1, 1990.

Give Instruction 11.81.

Use the mental state that conforms to the allegation in the charge. *See People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Insert in the blank the name of the victim.

Use the applicable Third Proposition.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.83 Definition Of Cemetery Vandalism

A person commits the offense of cemetery vandalism when he[, without proper legal authority,] wilfully and knowingly

[1] [(destroys) (damages)] the remains of a deceased human being.

[or]

[2] removes any portion of the remains of a deceased human being from a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)].

[or]

[3] desecrates human remains.

[or]

[4] [(obliterates) (vandalizes) (desecrates)]

[a] a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)] and the amount of damage is [(less than \$500) (at least \$500 and less than \$10,000) (at least \$10,000 and less than \$100,000) (\$100,000 or more)].

[or]

[b] a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons and the amount of damage is [(less than \$500) (at least \$500 and less than \$10,000) (at least \$10,000 and less than \$100,000) (\$100,000 or more)].

[or]

[c] [(plants) (trees) (shrubs) (flowers)] located upon or around a repository for human remains or within a human graveyard or cemetery and the amount of damage is [(less than \$500) (at least \$500 and less than \$10,000) (at least \$10,000 and less than \$100,000) (\$100,000 or more)].

[or]

[d] [(fence) (rail) (curb) [or structure of a similar nature]] intended for the protection or ornamentation of any [(tomb) (monument) (gravestone) [or other structure of like character]] and the amount of damage is [(less than \$500) (at least \$500 and less than \$10,000) (at least \$10,000 and less than \$100,000) (\$100,000 or more)].

[or]

[5] [(defaces) (vandalizes) (injures) (removes)] a [(gravestone or other memorial) (monument) (marker commemorating a deceased person [or group of persons])] [whether located within or outside of a recognized [(cemetery) (memorial park) (battlefield)]] and damages [(at least one but no more than 4 gravestones) (at least 5 but no more than 10 gravestones) (more than 10 gravestones)].

Committee Note

765 ILCS 835/1(a) and (b) (West 1992) (formerly Ill. Rev. Stat. ch. 21, §§ 15(a) and (b) (1991)), amended by P.A. 87-527, effective September 16, 1991; and P.A. 89-36, effective January 1, 1996.

Give Instruction 11.84.

Use paragraphs [1] through [3] for charges brought under Section 1(a), and paragraphs [4] or [5] for charges brought under Section 1(b).

Use the phrase “without proper legal authority” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 through 5/7-14).

Section 1(c) of the statute excludes from the statute’s provisions “the removal or unavoidable breakage or injury by a cemetery authority of anything placed in or upon any portion of its cemetery in violation of any of the rules and regulations of the cemetery authority, [or] the removal of anything placed in the cemetery by or with the consent of the cemetery authority that in the judgment of the cemetery authority has become wrecked, unsightly, or dilapidated.”

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

See *People v. Marquis*, 54 Ill. App. 3d 209, 11 Ill. Dec. 918, 369 N.E.2d 372 (4th Dist. 1977), concerning the required mental state of wilfulness; see also 720 ILCS 5/4-5 (1992) (formerly Ill. Rev. Stat. ch. 38, § 4-5 (1991)).

11.84 Issues In Cemetery Vandalism

To sustain the charge of cemetery vandalism, the State must prove the following proposition:

[1] That the defendant[, without proper legal authority,] wilfully and knowingly [(destroyed) (damaged)] the remains of a deceased human being.

[or]

[2] That the defendant[, without proper legal authority,] wilfully and knowingly removed any portion of the remains of a deceased human being from a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)].

[or]

[3] That the defendant[, without proper legal authority,] wilfully and knowingly desecrated human remains.

[or]

[4] That the defendant[, without proper legal authority,] wilfully and knowingly [(obliterated) (vandalized) (desecrated)]

[a] a [(burial ground where skeletal remains are buried) (grave) (crypt) (vault) (mausoleum) (repository of human remains)] and the amount of damage was [(less than \$500) (at least \$500 and less than \$10,000) (at least \$10,000 and less than \$100,000) (\$100,000 or more)].

[b] a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons and the amount of damage was [(less than \$500) (at least \$500 and less than \$10,000) (at least \$10,000 and less than \$100,000) (\$100,000 or more)].

[or]

[c] [(plants) (trees) (shrubs) (flowers)] located upon or around a repository for human remains or within a human graveyard or cemetery and the amount of damage was [(less than \$500) (at least \$500 and less than \$10,000) (at least \$10,000 and less than \$100,000) (\$100,000 or more)].

[or]

[d] [(fence) (rail) (curb) [or structure of a similar nature]] intended for the protection or ornamentation of any [(tomb) (monument) (gravestone) [or other structure of like character]] and the amount of damage was [(less than \$500) (at least \$500 and less than \$10,000) (at least \$10,000 and less than \$100,000) (\$100,000 or more)].

[or]

[5] That the defendant[, without proper legal authority,] wilfully and knowingly [(defaced) (vandalized) (injured) (removed)] a [(gravestone or other memorial) (monument) (marker commemorating a deceased person [or group of persons])]

[whether located within or outside of a recognized [(cemetery) (memorial park) (battlefield)]] and damaged [(at least one but no more than 4 gravestones) (at least 5 but no more than 10 gravestones) (more than 10 gravestones)].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

765 ILCS 835/1(a) and (b) (West 1992) (formerly Ill. Rev. Stat. ch. 21, §§ 15(a) and (b) (1991)), amended by P.A. 87-527, effective September 16, 1991; and P.A. 89-36, effective January 1, 1996.

Give Instruction 11.83.

See the Committee Note to Instruction 11.83 to distinguish separate sections of the statute.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without proper legal authority” in Instruction 11.83 (see Committee Note to Instruction 11.83), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Since the additional proposition or propositions that will thereby be included require the jury to find that the defendant acted without proper legal authority, the Committee has concluded that the phrase “without proper legal authority” need not be used in this issues instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

See *People v. Marquis*, 54 Ill. App. 3d 209, 11 Ill. Dec. 918, 369 N.E.2d 372 (4th Dist. 1977), concerning the required mental state of wilfulness; see also 720 ILCS 5/4-5 (1992) (formerly Ill. Rev. Stat. ch. 38, § 4-5 (1991)).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.85 Definition Of Compelling A Person Under 18 Years Of Age To Join An Organization Or Association

A person commits the offense of compelling a person under 18 years of age to join an organization or association when he, being 18 years of age or older, [(expressly or impliedly threatens to do bodily harm to a person under 18 years of age) (does bodily harm to a person under 18 years of age) (uses _____)] with the intent to [(solicit or cause any person under 18 years of age to join) (deter any person under 18 years of age from leaving)] any organization or association, regardless of the nature of such organization or association.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-6.1 (1991)); amended by P.A. 89-8, effective March 21, 1995.

Give Instruction 11.86.

Give this instruction for charges brought under the second paragraph of Section 12-6.1. Use Instruction 11.43 (Definition of Compelling Organization Membership of Persons) for charges brought under the first paragraph of Section 12-6.1.

The third alternative means of compelling organization membership—"any criminally unlawful means"—applies only to something other than threats to do bodily harm or actually inflicting bodily harm. Insert in the blank the "criminally unlawful means" to which the information or indictment refers.

Use applicable bracketed material.

11.86 Issues In Compelling A Person Under 18 Years Of Age To Join An Organization Or Association

To sustain the charge of compelling a person under 18 years of age to join an organization or association, the State must prove the following propositions:

First Proposition: That the defendant [(expressly or impliedly threatened to do bodily harm to a person under 18 years of age) (did bodily harm to a person under 18 years of age (used _____))]; and

Second Proposition: That the defendant did so with the intent to [(solicit or cause a person under 18 years of age to join) (deter a person under 18 years of age from leaving)] any organization or association; and

Third Proposition: That when the defendant did so, he was 18 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, then you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-6.1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-6.1 (1991)); amended by P.A. 89-8; effective March 21, 1995.

Give Instruction 11.85.

Give this instruction only for charges brought under the second paragraph of Section 12-6.1 Use Instruction 11.44 (Issues in Compelling Organization Membership of Persons) for charges brought under the first paragraph of Section 12-6.1.

If at issue, insert in the blank the criminally unlawful means. See Committee Note to Instruction 11.85.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.87 Definition Of Stalking (Until August 20, 1993)

A person commits the offense of stalking when he transmits a threat to another person with the intent to place that person in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)], and in furtherance of that threat does [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly follows the person, other than within the residence of the defendant.

[or]

[2] knowingly places the person under surveillance by remaining present outside [(the person's school) (the person's place of employment) (the person's vehicle) (any place occupied by the person) (the person's residence other than the residence of the defendant)].

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged stalking occurred before August 20, 1993.

720 ILCS 5/12-7.3 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.88.

Section 12-7.3(c) exempts picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute from the offense of stalking. The defendant bears the burden of proving this exception by a preponderance of the evidence. See *People v. Smith*, 71 Ill. 2d 95, 15 Ill. Dec. 864, 374 N.E.2d 472 (1978); *People v. Foster*, 195 Ill. App. 3d 926, 142 Ill. Dec. 371, 552 N.E.2d 1112 (5th Dist. 1990); *People v. McQueen*, 241 Ill. App. 3d 509, 181 Ill. Dec. 859, 608 N.E.2d 1333 (4th Dist. 1993).

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.87A Definition Of Follows Another Person

The phrase “follows another person” means [(to move in relative proximity to a person as that person moves from place to place) (to remain in relative proximity to a person who is stationary or whose movements are confined to a small area)].

[The phrase “follows another person” does not include a following within the residence of the defendant.]

Committee Note

720 ILCS 5/12-7.3(e) (West 1994), amended by P.A. 89-377, effective August 18, 1995.

Give this instruction when the phrase “follows another person” is at issue.

Use applicable bracketed material.

11.87B Definition Of *Bona Fide* Labor Dispute

The phrase “*bona fide* labor dispute” means any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the making or maintaining of collective bargaining agreements, and the terms to be included in those agreements.

Committee Note

720 ILCS 5/12-7.3(f) (West 1994), added by P.A. 89-377, effective August 18, 1995.

Give this instruction when the phrase “*bona fide* labor dispute” is at issue.

11.87C Definition Of Places A Person Under Surveillance

The phrase “places a person under surveillance” means that the defendant remained present outside [(the school of _____) (the place of employment of _____) (the vehicle of _____) (any place occupied by _____) (a residence other than the residence of the defendant)].

Committee Note

720 ILCS 5/12-7.3(d) (West 1994).

Give this instruction when the phrase “places a person under surveillance” is at issue.

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

This instruction used to be bracketed paragraph [3] in Instruction 11.87X.

11.87X Definition Of Stalking (As Of August 20, 1993)

A person commits the offense of stalking when he knowingly [without lawful justification] on at least 2 separate occasions [(follows another person) (places another person under surveillance) (follows another person or places another person under surveillance)] and

[1] at any time knowingly transmits a threat to that person of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] places that person in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

Committee Note

720 ILCS 5/12-7.3 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving stalking that allegedly occurred before August 20, 1993, use Instruction 11.87.

Give Instruction 11.88X.

When the phrase “follows another person” is at issue, give Instruction 11.87A, defining that phrase and explaining what it does not include.

When the phrase “places a person under surveillance” is at issue, give Instruction 11.87C, defining that phrase.

Section 12-7.3(c) provides that picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute does not come within the definition of stalking. When a *bona fide* labor dispute is at issue, give Instruction 11.87B, defining that phrase. P.A. 88-402, effective August 20, 1993, added that “any exercise of the right of free speech or assembly that is otherwise lawful” similarly does not come within the definition of stalking. See 720 ILCS 5/12-7.3(c) (West 1994). The defendant bears the burden of proving these exceptions by a preponderance of the evidence. See *People v. Smith*, 71 Ill. 2d 95, 15 Ill. Dec. 864, 374 N.E.2d 472 (1978); *People v. Foster*, 195 Ill. App. 3d 926, 142 Ill. Dec. 371, 552 N.E.2d 1112 (5th Dist. 1990); *People v. McQueen*, 241 Ill. App. 3d 509, 181 Ill. Dec. 859, 608 N.E.2d 1333 (4th Dist. 1993).

Use applicable bracketed material.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.88 Issues In Stalking (Until August 20, 1993)

To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant transmitted a threat to _____; and

Second Proposition: That the defendant did so with the intent to place _____ in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)]; and

Third Proposition: That the defendant, in furtherance of that threat, did [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly followed _____, other than within the residence of the defendant.

[or]

[2] knowingly placed _____ under surveillance by remaining present outside [(the school of _____) (the place of employment of _____) (the vehicle of _____) (any place occupied by _____) (the residence of _____ other than the residence of the defendant)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged stalking occurred before August 20, 1993.

720 ILCS 5/12-7.3 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.87.

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.88X Issues In Stalking (As Of August 20, 1993)

To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly [without lawful justification] [(followed _____) (placed _____ under surveillance) (followed or placed _____ under surveillance)]; and

[1] *Second Proposition:* That the defendant at any time knowingly transmitted a threat to _____ of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] *Second Proposition:* That the defendant knowingly placed _____ in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-7.3 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.3 (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving stalking that allegedly occurred before August 20, 1993, use Instruction 11.88.

Give Instruction 11.87X.

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Use applicable bracketed material.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.89 Definition Of Aggravated Stalking—Bodily Harm, Confinement, Or Restraint

A person commits the offense of aggravated stalking when, in conjunction with committing the offense of stalking, he [(intentionally) (knowingly) (recklessly)] [(causes bodily harm to) (confines or restrains)] the victim.

Committee Note

720 ILCS 5/12-7.4(a)(1) and (a)(2) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.4(a)(1) and (a)(2) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.87.

Give Instruction 11.90.

Section 12-7.4(c) provides that picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute does not come within the definition of stalking. P.A. 88-402, effective August 20, 1993, added that “any exercise of the right of free speech or assembly that is otherwise lawful” similarly does not come within the definition of aggravated stalking. See 720 ILCS 5/12-7.4(c) (West 1994). The defendant bears the burden of proving these exceptions by a preponderance of the evidence. See *People v. Smith*, 71 Ill. 2d 95, 15 Ill. Dec. 864, 374 N.E.2d 472 (1978); *People v. Foster*, 195 Ill. App. 3d 926, 142 Ill. Dec. 371, 552 N.E.2d 1112 (5th Dist. 1990); *People v. McQueen*, 241 Ill. App. 3d 509, 181 Ill. Dec. 859, 608 N.E.2d 1333 (4th Dist. 1993).

Based on *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant’s mental state when he allegedly caused bodily harm to, confined, or restrained the victim. (But see *People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

The Committee decided to divide the offense of aggravated stalking into two separate sets of definitional and issues instructions—aggravated stalking based on bodily harm, confinement, or restraint (Instructions 11.89 and 11.90), and aggravated stalking based on the violation of a court order (Instructions 11.91 and 11.92)—because the Committee believed one set of definitional and issues instructions for this offense might prove unnecessarily complicated.

P.A. 88-402, effective August 20, 1993, also substantially redefined the offense of stalking and required the Committee to prepare Instructions 11.87X, 11.88X, 11.90X, and 11.92X to address this statutory change. However, because this

instruction merely refers by name to the offense of stalking, the Committee had no need to modify it.

Use applicable bracketed material.

11.90 Issues In Aggravated Stalking—Bodily Harm, Confinement, Or Restraint (Until August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant transmitted a threat to _____; and

Second Proposition: That the defendant did so with the intent to place _____ in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)]; and

Third Proposition: That the defendant, in furtherance of that threat, did [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly followed _____, other than within the residence of the defendant;

[or]

[2] knowingly placed _____ under surveillance by remaining present outside [(the school of _____) (the place of employment of _____) (the vehicle of _____) (any place occupied by _____) (the residence of _____ other than the residence of the defendant)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Fourth Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] [(caused bodily harm to _____) (confined or restrained _____)].

If you find from your consideration of all the evidence that this Fourth Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Fourth Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of stalking. Thus, this instruction may be used *only* in cases in which the alleged

aggravated stalking occurred before August 20, 1993.

720 ILCS 5/12-7.4(a)(1) and (a)(2) (West 1992) (formerly Ill. Rev. Stat. ch. 38, §§ 12-7.4(a)(1) and (a)(2) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.89.

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase “in *conjunction with committing* the offense of stalking” (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Insert in the blanks the name of the victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Based on *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant’s mental state when he allegedly caused bodily harm to, confined, or restrained the victim. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.90X Issues In Aggravated Stalking—Bodily Harm, Confinement, Or Restraint (As Of August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly [(followed _____) (placed _____ under surveillance) (followed or placed _____ under surveillance)]; and

[1] *Second Proposition:* That the defendant at any time knowingly transmitted a threat to _____ of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] *Second Proposition:* That the defendant knowingly placed _____ in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Third Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] [(caused bodily harm to _____) (confined or restrained _____)].

If you find from your consideration of all the evidence that this Third Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Third Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

720 ILCS 5/12-7.4(a)(1) and (a)(2) (West 1992) (formerly Ill. Rev. Stat. ch. 38, §§ 12-7.4(a)(1) and (a)(2) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which

substantially rewrote the definition of stalking. For cases involving aggravated stalking that allegedly occurred before August 20, 1993, use Instruction 11.90.

Give Instruction 11.89.

Insert in the blanks the name of the victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase “in conjunction with committing the offense of stalking” (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Based on *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant’s mental state when he allegedly caused bodily harm to, confined, or restrained the victim. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.91 Definition Of Aggravated Stalking—Violation Of A Court Order

A person commits the offense of aggravated stalking when, in conjunction with committing the offense of stalking, he [(intentionally) (knowingly) (recklessly)] violates [(a temporary restraining order) (an order of protection) (an injunction)] prohibiting the [(harassment) (interference with personal liberty) (physical abuse) (willful deprivation) (neglect) (exploitation) (intimidation of a dependent)] of the victim.

The term [(“harassment”) (“interference with personal liberty”) (“physical abuse”) (“willful deprivation”) (“neglect”) (“exploitation”) (“intimidation of a dependent”)] means _____.

Committee Note

720 ILCS 5/12-7.4(a)(3) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.4(a)(3) (1991)), added by P.A. 87-870 and 87-871, effective July 12, 1992.

Give Instruction 11.87.

Give Instruction 11.90.

Section 12-7.4(c) provides that picketing occurring at the workplace that is otherwise lawful and arises out of a *bona fide* labor dispute does not come within the definition of stalking. P.A. 88-402, effective August 20, 1993, added that “any exercise of the right of free speech or assembly that is otherwise lawful” similarly does not come within the definition of aggravated stalking. See 720 ILCS 5/12-7.4(c) (West 1994). The defendant bears the burden of proving these exceptions by a preponderance of the evidence. See *People v. Smith*, 71 Ill. 2d 95, 15 Ill. Dec. 864, 374 N.E.2d 472 (1978); *People v. Foster*, 195 Ill. App. 3d 926, 142 Ill. Dec. 371, 552 N.E.2d 1112 (5th Dist. 1990); *People v. McQueen*, 241 Ill. App. 3d 509, 181 Ill. Dec. 859, 608 N.E.2d 1333 (4th Dist. 1993).

Based on *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant’s mental state when he allegedly violated the temporary restraining order, order of protection, or injunction at issue. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

The Committee decided to divide the offense of aggravated stalking into two separate sets of definitional and issues instructions—aggravated stalking based on bodily harm, confinement, or restraint (Instructions 11.89 and 11.90), and aggravated stalking based on the violation of a court order (Instructions 11.91 and 11.92)—because the Committee believed one set of definitional and issues instructions for this offense might prove too complicated.

Section 12-7.4(a)(3), which defines this form of aggravated stalking, incorporates the provisions of 750 ILCS 60/214(b)(1) (West 1992) (formerly Ill. Rev. Stat. ch. 40, § 2312-14(b)(1) (1991)) by specific reference. The behavior specified in this instruction, which raises the offense of stalking (a Class 4 felony) to aggravated stalking (a Class 3 felony), is thus derived from 750 ILCS 60/214(b)(1).

P.A. 88-402, effective August 20, 1993, also substantially redefined the offense of stalking and required the Committee to prepare Instructions 11.87X, 11.88X, 11.90X, and 11.92X to address this statutory change. However, because this instruction merely refers by name to the offense of stalking, the Committee had no need to modify it.

Insert in the blank the definition of the term that is used in the last bracketed alternative in the first paragraph of this instruction. Give the definition for this term as set forth in Section 103 of the Illinois Domestic Violence Act (750 ILCS 60/103 (West 1992) (formerly Ill. Rev. Stat. ch. 40, § 2311-3 (1991))).

Use applicable bracketed material.

11.92 Issues In Aggravated Stalking—Violation Of A Court Order (Until August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant transmitted a threat to _____; and

Second Proposition: That the defendant did so with the intent to place _____ in reasonable apprehension of [(death) (bodily harm) (sexual assault) (confinement) (restraint)]; and

Third Proposition: That the defendant, in furtherance of that threat, did [any one or more of] the following act[s] on at least two separate occasions:

[1] knowingly followed _____, other than within the residence of the defendant;

[or]

[2] knowingly placed _____ under surveillance by remaining present outside [(the school of _____) (the place of employment of _____) (the vehicle of _____) (any place occupied by _____) (the residence of _____ other than the residence of the defendant)];

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Fourth Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] violated [(a temporary restraining order) (an order of protection) (an injunction)] prohibiting the [(harassment) (interference with personal liberty) (physical abuse) (willful deprivation) (neglect) (exploitation) (intimidation of a dependent)] of _____.

If you find from your consideration of all the evidence that this Fourth Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Fourth Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

P.A. 88-402, effective August 20, 1993, substantially redefined the offense of

stalking. Thus, this instruction may be used *only* in cases in which the alleged stalking occurred before August 20, 1993.

720 ILCS 5/12-7.4(a)(3) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.4(a)(3) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992.

Give Instruction 11.91.

Use the bracketed phrase “any one or more of” when instructing the jury on both paragraphs [1] and [2].

Insert in the blanks the name of the alleged victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

Based on *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant’s mental state when he allegedly violated the temporary restraining order, order of protection, or injunction at issue. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase “in *conjunction with committing* the offense of stalking” (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.92X Issues In Aggravated Stalking—Violation Of A Court Order (As Of August 20, 1993)

To sustain the charge of aggravated stalking, the State must first prove that the defendant committed the offense of stalking. To sustain the charge of stalking, the State must prove the following propositions:

First Proposition: That the defendant on at least two separate occasions knowingly [(followed _____) (placed _____ under surveillance) (followed or placed _____ under surveillance)]; and

[1] *Second Proposition:* That the defendant at any time knowingly transmitted a threat to _____ of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

[or]

[2] *Second Proposition:* That the defendant knowingly placed _____ in reasonable apprehension of immediate or future [(bodily harm) (sexual assault) (confinement) (restraint)].

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, your deliberations on these charges should end and you should return a verdict of not guilty.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, then you have concluded that the defendant committed the offense of stalking. You should now go on with your deliberations to decide whether the defendant is guilty of aggravated stalking.

To sustain the charge of aggravated stalking, the State must prove the following additional proposition:

Third Proposition: That, in conjunction with committing the offense of stalking, the defendant [(intentionally) (knowingly) (recklessly)] violated [(a temporary restraining order) (an order of protection) (an injunction)] prohibiting the [(harassment) (interference with personal liberty) (physical abuse) (willful deprivation) (neglect) (exploitation) (intimidation of a dependent)] of _____.

If you find from your consideration of all the evidence that this Third Proposition has also been proved beyond a reasonable doubt, you should find the defendant guilty of aggravated stalking.

If you find from your consideration of all the evidence that this Third Proposition has not been proved beyond a reasonable doubt, then you should find the defendant not guilty of aggravated stalking [and guilty of stalking].

Committee Note

720 ILCS 5/12-7.4(a)(3) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-7.4(a)(3) (1991)), added by P.A. 87-870 and P.A. 87-871, effective July 12, 1992, and amended by P.A. 88-402, effective August 20, 1993.

Note that this instruction may be used *only* in cases in which the alleged stalking occurred on or after August 20, 1993, the effective date of P.A. 88-402, which substantially rewrote the definition of stalking. For cases involving aggravated stalking that allegedly occurred before August 20, 1993, use Instruction 11.92.

Give Instruction 11.91.

Insert in the blanks the name of the victim. The name of only one person should appear in each of the blanks of this instruction, and it should be the same name throughout.

After considerable discussion, the Committee decided to have the jury first instructed on the elements of stalking and then on the aggravating factor that changes stalking to aggravated stalking. The Committee chose to do so because of the difficulty in otherwise addressing in jury instructions the phrase “*in conjunction with committing the offense of stalking*” (emphasis added), a phrase that does not appear anywhere else in Illinois criminal law.

Based on *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), the Committee believes that one of the three bracketed mental states must describe a defendant’s mental state when he allegedly violated the temporary restraining order, order of protection, or injunction at issue. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used 720 ILCS 5/4-3(b) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.93 Definition Of Vehicular Invasion

A person commits the offense of vehicular invasion when he knowingly, by force [and without lawful justification], [(enters) (reaches into)] the interior of a motor vehicle while the motor vehicle is occupied by another person, with the intent to commit therein [(a theft) (the offense of _____)].

Committee Note

720 ILCS 5/12-11.1(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-11.1(a) (1991)), added by P.A. 86-1392, effective January 1, 1991.

Give Instruction 11.94.

Give the definition of the offense (theft or the specified felony) that is alleged as the objective of the vehicular invasion.

Give Instruction 23.43B, defining the term “motor vehicle,” if there is an issue as to whether the object of entry or penetration is a motor vehicle.

Use the phrase “and without lawful justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*).

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

11.94 Issues In Vehicular Invasion

To sustain the charge of vehicular invasion, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(entered) (reached into)] the interior of a motor vehicle; and

Second Proposition: That the defendant did so by force; and

Third Proposition: That the motor vehicle was occupied by another person; and

Fourth Proposition: That the defendant did so with the intent to commit therein [(a theft) (the offense of _____)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-11.1(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 12-11.1(a) (1991)), added by P.A. 86-1392, effective January 1, 1991.

Give Instruction 11.93.

Give the definition of the offense (theft or the specified felony) that is alleged as the objective of the vehicular invasion.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “and without lawful justification” in Instruction 11.93 (see Committee Note to Instruction 11.93), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without lawful justification, the Committee has concluded that the phrase “and without lawful justification” need not be used in this issues instruction.

Insert in the blank the intended offense alleged in the charge.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.95 Definition Of Ritualized Abuse Of A Child

A person commits the offense of ritualized abuse of a child when he [(intentionally) (knowingly) (recklessly)] commits [any of] the following act[s] [(with) (upon) (in the presence of)] a child under 18 years of age as part of a ceremony, rite, or any similar observance:

[1] actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being.

[or]

[2] forces ingestion, injection, or other application of any narcotic, drug, hallucinogen, or anesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to, any criminal activity.

[or]

[3] forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs, or chemical compounds.

[or]

[4] involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child.

[or]

[5] places the living child into a coffin or open grave containing a human corpse or remains.

[or]

[6] threatens death or serious harm to the child, the child's parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out.

[or]

[7] unlawfully dissects, mutilates, or incinerates a human corpse.

Committee Note

720 ILCS 5/12-33 (West Supp. 1993) (formerly Ill. Rev. Stat. ch. 38, § 12-33 (1992)).

Give Instruction 11.96.

Because Section 12-33 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill. 2d 281,

158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

11.96 Issues In Ritualized Abuse Of A Child

To sustain the charge of ritualized abuse of a child, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] committed [any of] the following act[s] [(with) (upon) (in the presence of)] a child under 18 years of age:

[1] actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being; and

[or]

[2] forces ingestion, injection, or other application of any narcotic, drug, hallucinogen, or anesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity; and

[or]

[3] forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs, or chemical compounds; and

[or]

[4] involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child; and

[or]

[5] places the living child into a coffin or open grave containing a human corpse or remains; and

[or]

[6] threatens death or serious harm to the child, the child's parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out; and

[or]

[7] unlawfully dissects, mutilates, or incinerates a human corpse; and

Second Proposition: That the defendant did so as part of a ceremony, rite, or any similar observance.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-33 (West Supp. 1993) (formerly Ill. Rev. Stat. ch. 38, § 12-33 (1992)).

Give Instruction 11.95.

Because Section 12-33 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.97 Definition Of Vehicular Endangerment

A person commits the offense of vehicular endangerment when he, with the intent to strike a motor vehicle, causes by any means an object to fall from an overpass in the direction of a moving motor vehicle traveling upon any highway, and that object strikes a motor vehicle [resulting in death].

Committee Note

720 ILCS 5/12-2.5 (West Supp. 1993), added by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.98.

Use the bracketed language “[resulting in death]” only in cases in which the State alleged that death resulted, thereby raising the offense from a Class 2 felony to a Class 1 felony. See Section 12-2.5(b).

Give Instruction 11.97A, defining the terms “object” and “overpass,” if either term is at issue.

Give Instruction 23.43B, defining the term “motor vehicle,” if there is an issue whether the vehicle on the highway is a motor vehicle.

Give Instruction 11.97B, defining the term “highway,” if there is an issue whether the location of the motor vehicle is a highway.

Use applicable bracketed material.

11.97A Definitions Of Object And Overpass

[The term “object” means any object or substance that by its size, weight, or consistency is likely to cause great bodily harm to any occupant of a motor vehicle.]

[The term “overpass” means any structure that passes over a highway.]

Committee Note

720 ILCS 5/12-2.5(c) (West Supp. 1993), added by P.A. 88-467, effective July 1, 1994.

Use applicable bracketed material.

11.97B Definition Of Highway

The term "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Committee Note

625 ILCS 5/1-126 (West 1992); see also 720 ILCS 5/12-2.5(c) (West Supp. 1993), added by P.A. 88-467, effective July 1, 1994.

11.98 Issues In Vehicular Endangerment

To sustain the charge of vehicular endangerment, the State must prove the following propositions:

First Proposition: That the defendant caused by any means an object to fall from an overpass; and

Second Proposition: That the defendant did so with the intent to strike a motor vehicle; and

Third Proposition: That the defendant caused the object to fall in the direction of a moving motor vehicle traveling upon any highway; and

Fourth Proposition: That the object struck a motor vehicle[(.) (; and)]

[*Fifth Proposition:* That death resulted.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-2.5 (West Supp. 1993), added by P.A. 88-467, effective July 1, 1994.

Give Instruction 11.97.

Use the bracketed Fifth Proposition only in cases in which the State alleged that death resulted, thereby raising the offense from a Class 2 felony to a Class 1 felony. See Section 12-2.5(b).

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.99 Definition Of Permitting The Sexual Abuse Of A Child

A person commits the offense of permitting the sexual abuse of a child when he is a [(parent) (step-parent) (legal guardian) (person having custody)] of a child and he knowingly

[1] allows or permits an act of [(criminal sexual abuse) (aggravated criminal sexual abuse) (criminal sexual assault) (aggravated criminal sexual assault)] upon the child and fails to take reasonable steps to prevent the commission of the act [or future occurrences of such acts].

[or]

[2] [(permits) (induces) (promotes) (arranges for)] the child to engage in prostitution and fails to take reasonable steps to prevent the commission of the act [or future occurrences of such acts].

The word “child” means a person under 17 years of age.

Committee Note

720 ILCS 150/5.1 (West 1992) (formerly Ill. Rev. Stat. ch. 23, § 2355.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 11.100.

Give the definitional instructions for the appropriate underlying offense: criminal sexual abuse—Instruction 11.59; aggravated criminal sexual abuse—Instruction 11.61; criminal sexual assault—Instruction 11.55; aggravated criminal sexual assault—Instruction 11.57; or prostitution—Instruction 9.09.

Use the bracketed phrase “[or future occurrences of such acts]” when appropriate.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.100 Issues In Permitting The Sexual Abuse Of A Child

To sustain the charge of permitting the sexual abuse of a child, the State must prove the following propositions:

First Proposition: That the defendant was the [(parent) (step-parent) (legal guardian) (person having custody)] of _____; and

Second Proposition: That _____ was under 17 years of age; and

[1] *Third Proposition:* That the defendant knowingly allowed or permitted an act of [(criminal sexual abuse) (aggravated criminal sexual abuse) (criminal sexual assault) (aggravated criminal sexual assault)] upon _____; and

[or]

[2] *Third Proposition:* That the defendant knowingly [(permitted) (induced) (promoted) (arranged for)] _____ to engage in prostitution; and

Fourth Proposition: That the defendant failed to take reasonable steps to prevent the commission of the act [or future occurrences of such acts].

Committee Note

720 ILCS 150/5.1 (West 1992) (formerly Ill. Rev. Stat. ch. 23, § 2355.1 (1991)), amended by P.A. 88-680, effective January 1, 1995.

Give Instruction 11.99.

Insert in the blanks the name of the child.

The bracketed alternatives [1] and [2] of the Second Proposition correspond to the alternatives of the same number in Instruction 11.99, the definitional instruction for this offense. Select the alternative that corresponds to the alternative selected from the definitional instruction.

Use the bracketed phrase “[or future occurrences of such acts]” when appropriate.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.101 Definition Of Hazing

A person commits the offense of hazing when he knowingly requires a student or other person in [(a school) (a college) (a university) (an educational institution)] of this State to perform any act for the purpose of induction or admission into a [(group) (organization) (society)] associated or connected with that institution and the act is not [(sanctioned) (authorized)] by that educational institution and the act results in [(bodily harm) (great bodily harm) (death)] to any person.

Committee Note

720 ILCS 120/5, added by P.A. 89-292, effective January 1, 1996.

Give Instruction 11.102.

Select the bracketed alternative so that the instruction is no broader than the charging instrument. Hazing is a Class A misdemeanor, except hazing that results in death or great bodily harm is a Class 4 felony. 720 ILCS 120/10, added by P.A. 89-292, effective January 1, 1996.

Use applicable bracketed material.

11.102 Issues In Hazing

To sustain the charge of hazing, the State must prove the following propositions:

First Proposition: That the defendant knowingly required a student or other person in [(a school) (a college) (a university) (an educational institution)] of this State to perform an act; and

Second Proposition: That the act was for the purpose of induction or admission into a [(group) (organization) (society)] associated or connected with that educational institution; and

Third Proposition: That the act was not [(sanctioned) (authorized)] by that educational institution; and

Fourth Proposition: That the act resulted in [bodily harm] [(great bodily harm) (death)] to a person.

Committee Note

720 ILCS 120/5, added by P.A. 89-292, effective January 1, 1996.

Give Instruction 11.101.

Select the bracketed alternative so that the instruction is no broader than the charging instrument. Hazing is a Class A misdemeanor, except hazing that results in death or great bodily harm is a Class 4 felony. 720 ILCS 120/10, added by P.A. 89-292, effective January 1, 1996.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.2

11.103 Definition Of Predatory Criminal Sexual Assault Of A Child

A person commits the offense of predatory criminal sexual assault of a child when he is 17 years of age or older and [(intentionally) (knowingly) (recklessly)] commits [(an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purposes of [(sexual gratification) (arousal)] of the [(victim) (defendant)]) (an act of sexual penetration)] and

[1] the victim is under 13 years of age.

[or]

[2] the victim is under 13 years of age he [(is armed with a firearm) (personally discharges a firearm during the commission of the offense) (causes great bodily harm to the victim that [(results in permanent disability) (is life threatening)])].

[or]

[3] the victim is under 13 years of age and he delivers by [(injection) (inhalation) (ingestion) (transfer of possession) (by any means)] any controlled substance to the victim [(without the victim's consent) (by threat) (by deception)] for other than medical purposes.

Committee Note

Instruction and Committee Note Approved April 29, 2016.

720 ILCS 5/11-1.40(a) (West 2016). Renumbered and Amended as § 11-1.40 by P.A. 96-1551, Art.2, § 5, effective July 1, 2011; Amended by P.A. 98-370, § 5 effective January 1, 2014; Amended by P.A. 98-903, effective August 15, 2014.

Give Instruction 11.104 when no aggravating factors are charged and only the first bracketed option is selected.

Give Instruction 11.106 when aggravating factors are charged and either the second or third bracketed options are selected.

When applicable, give Instruction 4.36, defining the term “armed with a firearm”.

Section 11.1.40 (a) sets forth an offense which formerly was set forth as aggravated criminal sexual assault under Section 12-14(b)(1) (720 ILCS 5/12-14(b)(1)). P.A. 89-462, effective May 29, 1996, deleted Section 12-14(b)(1) and made this section a part of the new offense of predatory criminal sexual assault of a child.

In *People v. Terrell*, 132 Ill. 2d 178, 547 N.E.2d 145 (1989), the Illinois Supreme Court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant's claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature's silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210, 547 N.E.2d at 145. In *People v. Anderson*, 148 Ill. 2d 15, 591 N.E.2d 461 (1992), the supreme court held that even though the criminal hazing statute listed no mental state, 720 ILCS 5/4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (See also *People v. Gean*, 143 Ill. 2d 281,

573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 433 N.E.2d 629 (1982), for cases in which the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) In accordance with *Anderson*, the Committee has decided to provide three alternative mental states pursuant to Section 4-3(b) because Section 11-1.40(a) does not include a mental state. Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental state may be included in the instruction.

The Committee acknowledges that the appellate court in *People v. Burton*, 201 Ill. App. 3d 116, 558 N.E.2d 1369 (4th Dist. 1990), held that *Terrell* does not require the mental states to be included in the jury instruction for aggravated criminal sexual assault (720 ILCS 5/12-14). See also *People v. Smith*, 209 Ill. App. 3d 1043, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. However, because of the mandate expressed by the supreme court in *Anderson* and *Gean*, the Committee believes that mental states are required and must be proved by the State for this offense of predatory criminal sexual assault of a child. See also *People v. Nunn*, 77 Ill. 2d 243, 396 N.E.2d 27 (1979), and *People v. Valley Steel Products*, 71 Ill. 2d 408, 375 N.E.2d 1297 (1978).

11.104 Issues In Predatory Criminal Sexual Assault Of A Child

To sustain the charge of predatory criminal sexual assault of a child, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] committed [(an act of contact, however slight, between the [(sex organ) (anus)] of one person and the part of the body of another for the purposes of [(sexual gratification) (arousal)] of _____) (sexual penetration with _____)]; and

Second Proposition: That the defendant was 17 years of age or older when the act was committed; and

Third Proposition: That _____ was under 13 years of age when the act was committed.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 29, 2016.

720 ILCS 5/11-1.40(a) (Renumbered and amended as § 11-1.40 by P.A. 96-1551, Art.2, § 5, effective July 1, 2011). Added by P.A. 89-428, effective December 13, 1995; Amended by 89-462, effective May 29, 1996, Amended by P.A. 90-396, effective January 1, 1998; Amended by P.A. 90-735, effective August 11, 1998; 91-238, effective January 1, 2000; Amended by P.A. 91-404, effective January 1, 2000; Amended by P.A. 92-16, effective June 28, 2001; Amended by P.A. 95-640, effective June 1, 2008; Amended by P.A. 98-370, effective January 1, 2014; amended by P.A. 98-903, effective August 15, 2014.

Give Instruction 11.103.

See Committee Note to Instruction 11.103 regarding the use of mental states in this instruction.

When, in the First Proposition the allegation is “an act of contact, however slight, . . .,” insert in the blank the word “defendant” or the name of the victim as applicable.

When, in the First Proposition the allegation is “an act of sexual penetration,” insert in the blank the name of the victim.

In the Third Proposition, insert in the blank the name of the victim.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.105 Definition Of Predatory Criminal Sexual Assault Of A Child—Great Bodily Harm—As Of July 1, 2011

A person commits the offense of predatory criminal sexual assault of a child resulting in great bodily harm when he [(intentionally) (knowingly) (recklessly)] commits an act of sexual penetration when he is 17 years of age or older and the victim is under 13 years of age when the act is committed and he causes great bodily harm to the victim that [(resulted in permanent disability) (was life threatening)].

Committee Note

Instruction and Committee Note Approved April 29, 2016.

“The Predatory Criminal Sexual Assault of Child” statute was amended effective July 1, 2011. Instructions that reflect this amendment are found at 11.107 through 11.120. For the charge of “Predatory Criminal Sexual Assault of a Child” which was committed on or after July 1, 2011, use the appropriate Illinois Pattern Jury instruction in that series. Do not use this Instruction for the charge of “Predatory Criminal Sexual Assault of a Child” which was committed on or after July 1, 2011.

720 ILCS 5/12-14.1(a)(2), added by P.A. 89-462, effective May 29, 1996.

Give Instruction 11-106.

See the Committee Note for Instruction 11.103 regarding the relationship between this new offense of predatory criminal sexual assault of a child as set forth in Section 12-14.1(a) and the offense of aggravated criminal sexual assault formerly set forth in Section 12-14(b)(1) (720 ILCS 5/12-14(b)(1)).

In *People v. Terrell*, 132 Ill. 2d 178, 547 N.E.2d 145 (1989), the Illinois Supreme Court upheld the constitutional validity of the aggravated criminal sexual assault statute despite the defendant’s claim that it violated due process by not prescribing an applicable mental state. The court, which was not asked to decide the propriety of a jury instruction, held that in the legislature’s silence a mental state of knowledge, intent, or recklessness will be implied in the offense. *Terrell*, 132 Ill. 2d at 210, 547 N.E.2d at 159. In *People v. Anderson*, 148 Ill. 2d 15, 591 N.E.2d 461 (1992), the supreme court held that even though the criminal hazing statute listed no mental state, 720 ILCS 5/4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (See also *People v. Gean*, 143 Ill. 2d 281, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 433 N.E.2d 629 (1982), for cases in which the supreme court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) In accordance with *Anderson*, the Committee has decided to provide three alternative mental states pursuant to Section 4-3(b) because Section 12-14.1(a)(1) does not include a mental state. Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental state may be included in the instruction.

The Committee acknowledges that the appellate court in *People v. Burton*, 201 Ill. App. 3d 116, 558 N.E.2d 1369 (4th Dist. 1990), held that *Terrell* does not require the mental states to be included in the jury instruction for aggravated criminal

sexual assault (720 ILCS 5/12-14). *See also* *People v. Smith*, 209 Ill. App. 3d 1043, 568 N.E.2d 482 (4th Dist. 1991), which confirmed that the jury need not be instructed on the mental states implied in the offense of aggravated criminal sexual assault. However, because of the mandate expressed by the supreme court in *Anderson and Gean*, the Committee believes that mental states are required and must be proved by the State for this offense of predatory criminal sexual assault of a child. *See also* *People v. Nunn*, 77 Ill. 2d 243, 32 Ill. Dec. 914, 396 N.E.2d 27 (1979), and *People v. Valley Steel Products*, 71 Ill. 2d 408, 17 Ill. Dec. 13, 375 N.E.2d 1297 (1978).

11.106 Issues In Predatory Criminal Sexual Assault Of A Child—Great Bodily Harm, Firearm Or Controlled Substance

To sustain the charge of predatory criminal sexual assault of a child [(resulting in great bodily harm) (when the defendant is [(armed with a firearm) (personally discharges a firearm during the commission of the offense)]) (when the defendant delivers any controlled substance)], the State must prove the following propositions:

[1] *First Proposition:* That the defendant [(intentionally) (knowingly) (recklessly)] committed an act of contact, however slight, between the [(sex organ) (anus)] of one person and the part of the body of another for the purposes of [(sexual gratification) (arousal)] of _____; and

[or]

[2] *First Proposition:* That the defendant [(intentionally) (knowingly) (recklessly)] committed an act of sexual penetration with _____; and

Second Proposition: That the defendant was 17 years of age or older when the act was committed; and

Third Proposition: That _____ was under 13 years of age when the act was committed; and

Fourth Proposition: That the defendant caused great bodily harm to _____ that [(resulted in permanent disability) (was life threatening)].

[or]

Fourth Proposition: That the defendant [(was armed with a firearm) (personally discharged a firearm during the commission of the offense)].

[or]

Fourth Proposition: That the defendant delivered by [(injection) (inhalation) (ingestion) (transfer of possession) (any means)] any controlled substance to _____ [(without _____'s consent) (by threat) (by deception)] for other than medical purposes.

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 26, 2016.

720 ILCS 5/11-1.40(a) (Renumbered and amended as § 11-1.40 by P.A. 96-1551, Art.2, § 5, effective July 1, 2011). Added by P.A. 89-428, effective December 13, 1995; Amended by 89-462, effective May 29, 1996, Amended by P.A. 90-396, effective January 1, 1998; Amended by P.A. 90-735, effective August 11, 1998;

91-238, effective January 1, 2000; Amended by P.A. 91-404, effective January 1, 2000; Amended by P.A. 92-16, effective June 28, 2001; Amended by P.A. 95-640, effective June 1, 2008; Amended by P.A. 98-370, effective January 1, 2014; Amended by P.A. 98-903, effective August 15, 2014.

Give Instruction 11.103.

Do not use Instruction 11.105 with this Instruction.

When this Instruction is given, there must be four propositions stated.

When applicable, give Instruction 18.35G, defining “firearm.”

When applicable, give Instruction 4.36, defining “armed with a firearm.”

When applicable, give Instruction 4.37, defining “personally discharged a firearm.”

See Committee Note to Instruction 11.103 regarding the use of mental states in this instruction.

When, in the First Proposition the allegation is “an act of contact, however slight, . . .,” insert in the blank the word “defendant” or the name of the victim as applicable.

When, in the First Proposition the allegation is “an act of sexual penetration,” insert in the blank the name of the victim.

In the Third Proposition, insert in the blank the name of the victim.

In the Fourth Proposition, insert in the blank(s) the name of the victim.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.107 Definition Of Aggravated Battery—Based On Injury

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, other than by the discharge of a firearm, [(causes bodily harm) (makes physical contact of an insulting or provoking nature)]; and

(1) causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to an individual.

[or]

(2) causes [(severe and permanent disability) (great bodily harm) (disfigurement)] to another by means of a [(caustic substance) (flammable substance) (poisonous gas) (deadly [(biological) (chemical)] [(contaminant) (agent)]) (radioactive substance) (bomb) (explosive compound)].

[or]

(3) causes [(great bodily harm) (permanent disability) (disfigurement)] to an individual whom the person knows to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee) (Department of Human Services employee [(supervising) (controlling)] sexually [(dangerous) (violent)] persons)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

(4) causes [(great bodily harm) (permanent disability) (disfigurement)] to an individual 60 years of age or older.

[or]

(5) strangles another individual.

Committee Note*Instruction and Committee Note Approved April 13, 2016*

720 ILCS 5/12-3.05(a) (West 2016), amended and renumbered by P.A. 96-1551 effective July 1, 2011, amended by P.A.s 97-313, 97-467, 97-597 effective January 1, 2012, amended by P.A. 97-1109 effective January 1, 2013, and P.A.s 98-369, 98-385 effective January 1, 2014.

The current aggravated battery statute, 720 ILCS 5/12-3.05, has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.107 when the defendant is charged under 720 ILCS 5/12-3.05(a).

Give Instruction 11.108.

When applicable, give Instruction 11.107A defining the word “strangle.”

When applicable, give Instruction 4.26, defining “correctional institutional employee.”

When the defendant is charged with causing great bodily harm under 720 ILCS 5/12-3.05(a)(1), (2), (3), or (4), it is not necessary to include the bracketed material alleging the defendant also caused bodily harm or made contact of an insulting or provoking nature. See the Committee Comment after Instruction 11.108.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

The definition of aggravated battery under Section 12-3.05 includes various legislative amendments that have occurred over several years. These amendments have added a number of designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the alleged criminal behavior occurred.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.107A Definition Of Strangle

The word “strangle” means intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(i) (West 2016).

11.108 Issues In Aggravated Battery—Based on Injury

To sustain the charge of aggravated battery, the State must prove the following proposition(s):

[1] *First Proposition:* That the defendant knowingly caused great bodily harm, other than by the discharge of a firearm, to _____ [(.) (, and)]

Second Proposition: That the defendant did so by means of a [(caustic substance) (flammable substance) (poisonous gas) (deadly [(biological) (chemical)] [(contaminant) (agent)]) (radioactive substance) (bomb) (explosive compound)].

[or]

Second Proposition: That the defendant knew _____ to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee)]; and

Third Proposition: That the defendant [(knew _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: That at the time the defendant did so, he knew _____ to be a Department of Human Services employee; and

Third Proposition: That at the time the defendant did so, he knew that _____ was [(supervising) (controlling)] sexually [(dangerous) (violent)] persons); and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: That at the time the defendant did so, _____ was 60 years of age or older.

[or]

[2] *First Proposition:* That the defendant knowingly [(caused bodily harm) (made physical contact of an insulting or provoking nature)], other than by the discharge of a firearm, with _____; and

Second Proposition: That the defendant caused [(permanent disability) (permanent disfigurement)] to _____.

[or]

Second Proposition: That the defendant caused [(severe and permanent disability) (disfigurement)] to _____; and

Third Proposition: That the defendant did so by means of [(a caustic substance) (a flammable substance) (a poisonous gas) (a deadly [(biological) (chemical)] [(contaminant) (agent)]) (a radioactive substance) (a bomb) (an explosive compound)].

[or]

Second Proposition: That the defendant caused [(permanent disability) (disfigurement)] to _____; and

Third Proposition: That at the time the defendant did so, he knew _____ to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee)]; and

Fourth Proposition: That the defendant [(knew _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: That at the time the defendant did so, he knew _____ to be a Department of Human Services employee; and

Third Proposition: That at the time the defendant did so, he knew that _____ was [(supervising) (controlling)] sexually [(dangerous) (violent)] persons); and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

Second Proposition: The defendant caused (permanent disability) (disfigurement)] to _____; and

Third Proposition: That at the time the defendant did so, _____ was 60 years of age or older.

[or]

Second Proposition: That the defendant strangled _____.

If you find from your consideration of all the evidence that [(each one of these propositions) (this proposition)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(any one of these propositions) (this proposition)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(a) (West 2016), amended and renumbered by P.A. 96-1551 effective July 1, 2011, and amended by P.A.s 97-313, 97-467, 97-597 effective January 1, 2012, P.A. 97-1109 effective January 1, 2013, and P.A.s 98-369, 98-385 effective January 1, 2014.

Give Instruction 11.107.

Insert in the blank(s) the name of the victim.

When the defendant is charged with causing great bodily harm under section (a) (1), (2), (3) or (4) of 720 ILCS 5/12-3.05, it is not necessary to include the bracketed material alleging the defendant caused bodily harm or made contact of an insulting or provoking nature. If the defendant is charged with causing great bodily harm, use the instructions in the first set of propositions, bracketed “[1].” If the defendant is charged with causing permanent disability, severe and permanent disability, or disfigurement, use the second set of propositions, bracketed “[2].” Because “great bodily harm” necessarily includes “bodily harm,” the Committee believes it is not necessary for the jury to separately find that the defendant committed a battery. The second set of propositions contain the predicate allegations of battery as otherwise required by the statutory language i.e., “when, in committing a battery.”

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction, although it does need to be included in Instruction 11.107 (see the Committee Note to Instruction 11.107).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.109 Definition Of Aggravated Battery—Based On Injury To A Child Or Person With An Intellectual Disability

A person commits the offense of aggravated battery of a [(child) (person with an intellectual disability)] when he, being a person of the age of 18 years or more, knowingly [without legal justification] by any means, [(causes [great] bodily harm to) (makes physical contact of an insulting or provoking nature with)] [(any child under the age of 13 years) (any severely or profoundly intellectually disabled person)] and causes [(disability) (disfigurement) (permanent disability) (permanent disfigurement)] to that [(child) or (severely or profoundly intellectually disabled person)].

Committee Note*Instruction and Committee Note Approved April 13, 2016*

720 ILCS 5/12-3.05(b) (West 2016), amended by P.A. 96-1551, effective July 1, 2011. (P.A. 96-1551 also added to this Section a crime for “bodily harm” (as opposed to “great bodily harm”) and “disability or disfigurement” (as opposed to “permanent disability or disfigurement”).

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.109 when the defendant is charged under 720 ILCS 5/12-3.05(b).

Give Instruction 11.110.

When the defendant is charged with causing great bodily harm under 720 ILCS 5/12-3.05(b), it is not necessary to include the bracketed material alleging the defendant also caused bodily harm or made contact of an insulting or provoking nature. See the Committee Comment after Instruction 11.108.

Give Instruction 11.65G when the alleged victim is an intellectually disabled person.

The definition of aggravated battery under Section 12-3.05 includes various legislative amendments that have occurred over several years. These amendments have added a number of designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the allegedly criminal behavior occurred.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 1961 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court

and counsel and should not be included in the instruction submitted to the jury.

11.110 Issues In Aggravated Battery—Based On Injury To A Child Or Person With An Intellectual Disability

To sustain the charge of aggravated battery of a [(child) (person with an intellectual disability)], the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly by any means caused [great] bodily harm to _____; and

Second Proposition: At the time of the act, the defendant was at least 18 years of age; and

Third Proposition: At the time of the act, _____ was a [(child under 13 years of age) (severely or profoundly intellectually disabled person)].

[or]

[2] *First Proposition:* That the defendant knowingly by any means [(caused bodily harm) (made physical contact of an insulting or provoking nature)] with _____; and

Second Proposition: That the defendant caused [(permanent disability) (permanent disfigurement)] to _____; and

Third Proposition: That when the defendant did so, the defendant was at least 18 years of age; and

Fourth Proposition: That when the defendant did so, _____ was a [(child under 13 years of age) (severely or profoundly intellectually disabled person)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(b) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

When the defendant is charged with causing bodily harm or great bodily harm under 720 ILCS 5/12-3.05(b), it is not necessary to include the predicate allegations of battery as otherwise required by the statutory language (“when, in committing a battery). In that situation, use the first set of propositions, bracketed “[1].” If the defendant is charged with causing disability, permanent disability, disfigurement or permanent disfigurement, use the second set of propositions, bracketed “[2].”

Insert in the blanks the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24–25.00.

Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction, although it does need to be included in Instruction 11.109 (see the Committee Note to Instruction 11.109).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.111 Definition Of Aggravated Battery—Based On Location Of Conduct

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, other than by the discharge of a firearm, [(causes bodily harm) (makes physical contact of an insulting or provoking nature)] with an individual and in doing so, [(he) (the other person)] is on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement) (a sports venue) (a domestic violence shelter)].

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(c) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.111 when the defendant is charged under 720 ILCS 5/12-3.05(c).

Give Instruction 11.112. [P1]

When applicable, give Instruction 4.27 defining “sports venue.”

When applicable, give Instruction 4.28 defining “domestic violence shelter.”

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.112 Issues In Aggravated Battery—Based on Location Of Conduct

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly by any means, other than by the discharge of a firearm, [(caused bodily harm) (made physical contact of an insulting or provoking nature)] with _____; and

Second Proposition: That when the defendant did so, [(he) (_____)] was on or about [(a public way) (public property) (a public place of accommodation) (a public place of amusement) (a sports venue) (a domestic violence shelter)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(c) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.111.

When applicable, give Instruction 4.27 defining “sports venue.”

When applicable, give Instruction 4.28 defining “domestic violence shelter.”

Insert in the blank(s) the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction, although it does need to be included in Instruction 11.111 (see the Committee Note to Instruction 11.111).

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.113 Definition Of Aggravated Battery—Based On Status Of Victim

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, other than by the discharge of a firearm, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and in doing so, he knows the individual harmed to be

[1] 60 years of age or older.

[or]

[2] pregnant.

[or]

[3] a person who has a physical disability. [P1]

[or]

[4] a [(teacher) (school employee)] [(upon school grounds) (upon grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[5] a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee) (Department of Human Services employee [(supervising) (controlling)] sexually [(dangerous) (violent)] persons)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[6] a [(judge) (emergency management worker) (emergency medical technician) (utility worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[7] an [(officer) (employee)] of [(the State of Illinois) (a unit of local government) (a school district)] while performing his official duties.

[or]

[8] a transit employee performing his official duties.

[or]

[9] a transit passenger.

[or]

[10] a taxi driver on duty.

[or]

[11] a merchant who detains the person for an alleged commission of retail theft.

[or]

[12] a [(person authorized to serve process) (special process server appointed by the

circuit court)] in the performance of his duties as a process server.

[or]

[13] a nurse in the performance of his duties as a nurse.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(d) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.113 when the defendant is charged under 720 ILCS 5/12-3.05(d).

Give Instruction 11.114.

When applicable, give Instruction 4.29 defining “physically handicapped person.”

When applicable, give Instruction 4.26 defining “correctional institution employee.”

When applicable, give Instruction 4.30 defining “emergency medical technician.”

When applicable, give Instruction 4.31 defining “utility worker.”

When applicable, give Instruction 4.32 defining “transit employee.”

When applicable, give Instruction 4.33 defining “transit passenger.”

When applicable, give Instruction 13.46B defining “merchant.”

The definition of aggravated battery under Section 12-3.05 includes various legislative amendments that have occurred over several years. These amendments have added a number of designations of individuals who are to receive special protection. Court and counsel should ensure that a particular category of persons mentioned in a charge under this Section was in fact included within the statute when the allegedly criminal behavior occurred.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 et seq.). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.114 Issues In Aggravated Battery—Based On Status Of Victims

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly, by any means, other than by the discharge of a firearm, [(caused bodily harm to _____) (made physical contact of an insulting or provoking nature with _____)]; and

[1] *Second Proposition:* That at the time the defendant did so, he knew _____ to be

[a] 60 years of age or older.

[or]

[b] pregnant.

[or]

[c] a person who has a physical disability.

[or]

[2] *Second Proposition:* That at the time the defendant did so, he knew _____ to be a [(teacher) (school employee)]; and

Third Proposition: That at the time the defendant did so, he knew _____ was [(upon the grounds of a school) (upon grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[3] *Second Proposition:* That at the time the defendant did so, he knew _____ to be a [(peace officer) (community policing volunteer) (fireman) (private security officer) (correctional institution employee)]; and

Third Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

[4] *Second Proposition:* That at the time the defendant did so, he knew _____ to be a Department of Human Services employee; and

Third Proposition: That at the time the defendant did so, he knew that _____ was [(supervising) (controlling)] sexually [(dangerous) (violent)] persons; and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

[5] *Second Proposition:* That at the time the defendant did so, he knew _____ to be [(a judge) (an emergency management worker) (an emergency medical technician) (a utility worker)]; and

Third Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.

[or]

[6] *Second Proposition:* That at the time the defendant did so, he knew _____ to be an [(officer) (employee)] of [(the State of Illinois) (a unit of local government) (a school district)], and

Third Proposition: That the defendant knew _____ was performing his official duties.

[or]

[7] *Second Proposition:* That at the time the defendant did so, he knew _____ to be a transit employee; and

Third Proposition: That the defendant knew _____ was performing his official duties.

[or]

[8] *Second Proposition:* That at the time the defendant did so, he knew _____ to be a transit passenger.

[or]

[9] *Second Proposition:* That at the time the defendant did so, he knew _____ to be a taxi driver; and

Third Proposition: That the defendant knew _____ was on duty.

[or]

[10] *Second Proposition:* That at the time the defendant did so, he knew _____ to be a merchant; and

Third Proposition: That the defendant knew _____ was detaining the defendant for an alleged commission of retail theft.

[or]

[11] *Second Proposition:* That at the time the defendant did so, he knew _____ to be a [(person authorized to serve process) (special process server appointed by the circuit court)]; and

Third Proposition: That the defendant knew _____ to be in the performance of his official duties as a process server.

[or]

[12] *Second Proposition:* That at the time the defendant did so, he knew _____ to be a nurse; and

Third Proposition: That the defendant knew _____ to be in the performance of his official duties.

If you find from your consideration of all the evidence that each one of these

propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(d) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.113.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction, although it does need to be included in Instruction 11.113 (see the Committee Note to Instruction 11.113).

Insert in the blanks the name of the victim.

Use applicable paragraphs, subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.115 Definition Of Aggravated Battery—Based On Use Of A Firearm

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to another person.

[or]

[2] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to a person he knows to be [(a peace officer) (a community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[3] discharges a firearm, other than a machine gun or a firearm equipped with a silencer, and causes any injury to a person he knows to be an emergency medical technician employed by a [(municipality) (governmental unit)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[4] discharges a firearm and causes any injury to a person he knows to be a [(teacher) (student in a school) (school employee)] and such [(teacher) (student) (school employee)] is [(on the grounds of a school) (on the grounds adjacent to a school) (in any part of a building used for school purposes)].

[or]

[5] discharges a machine gun or a firearm equipped with a silencer, and causes any injury to another person.

[or]

[6] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be [(a peace officer) (a community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[7] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be an emergency medical technician employed by a [(municipality) (governmental unit)] [(performing his official duties) (battered to prevent performance of his official duties) (battered in retaliation for performing his official duties)].

[or]

[8] discharges a [(machine gun) (firearm equipped with a silencer)], and causes any injury to a person he knows to be a [(teacher) (student in a school) (school employee)] and such [(teacher) (student) (school employee)] is [(on the grounds of a school) (on the grounds adjacent to a school) (in any part of a building used for school purposes)].

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(e) (West 2016), amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.115 when the defendant is charged under 720 ILCS 5/12-3.05(e).

Give Instruction 11.116.

When applicable, give Instruction 11.23A defining “firearm.”

When applicable, give Instruction 11.115A defining “machine gun.”

When applicable, give Instruction 4.26 defining “correctional institution employee.”

When applicable, give Instruction 4.30 defining “emergency medical technician.”

When applicable, give Instruction 4.31 defining “utility worker.”

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

11.116 Issues In Aggravated Battery—Based On Use Of A Firearm

To sustain the charge of aggravated battery the State must prove the following propositions:

First Proposition: That the defendant knowingly discharged a [(firearm) (machine gun) (firearm equipped with a silencer)]; and

Second Proposition: That, in discharging the [(firearm) (machine gun) (firearm equipped with a silencer)], the defendant caused any injury to _____ [(.) (; and)]

[[1] *Third Proposition:* That the defendant knew that _____ was [(a peace officer) (community policing volunteer) (a person summoned by a peace officer) (a fireman) (a private security officer) (a correctional institution employee) (an emergency management worker)]; and

Fourth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.]

[or]

[[2] *Third Proposition:* That the defendant knew that _____ was an emergency medical technician; and

Fourth Proposition: That _____ was employed by a [(municipality) (governmental unit)], and

Fifth Proposition: That the defendant [(knew that _____ was performing) (battered _____ to prevent performance of) (battered _____ in retaliation for performing)] his official duties.]

[or]

[[3] *Third Proposition:* That the defendant knew that _____ was a [(teacher) (student in school) (school employee)]; and

Fourth Proposition: That _____ was [(on the grounds of a school) (on grounds adjacent to a school) (in any part of a building used for school purposes)].]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(e) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.115.

When the defendant is charged with injuring a person not in one of the specifically stated statutory designations, use only the First and Second Propositions. When the defendant is charged with injuring a peace officer, community policing volunteer, a person summoned by a peace officer, a fireman, a private security officer, a correctional institution employee, an emergency management worker, or an emergency medical technician, and the other statutory requirements are met (while performing his official duties, etc.), use the first set of the Third and Fourth Propositions, bracketed [1]. If the defendant is charged with injuring a teacher, student or school employee, use the second set of the Third and Fourth Propositions bracketed [2].

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction, although it does need to be included in Instruction 11.115 (see the Committee Note to Instruction 11.115).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.117 Definition Of Aggravated Battery—Based On Use Of A Weapon Or Device

A person commits the offense of aggravated battery when he knowingly [without legal justification] and by any means, [(causes bodily harm to) (makes physical contact of an insulting or provoking nature with)] another person, and

[1] in doing so, he uses [(a deadly weapon other than by the discharge of a firearm) (an air rifle)].

[or]

[2] in doing so, he wears a hood, robe, or mask to conceal his identity.

[or]

[3] knowingly shines or flashes a [(laser gunsight) (laser device)] [(attached to a firearm) (used in concert with a firearm)] so that the laser beam strikes upon or against another person.

[or]

[4] knowingly video or audio records the offense with the intent to disseminate the recording.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(f) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.117 when the defendant is charged under 720 ILCS 5/12-3.05(f).

Give Instruction 11.118.

When applicable, give Instruction 4.35 defining “air rifle.”

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.118 Issues In Aggravated Battery—Based On Use Of A Weapon Or Device

To sustain the charge of aggravated battery, the State must prove the following propositions:

First Proposition: That the defendant knowingly and by any means [(caused bodily harm to _____) (made physical contact of an insulting or provoking nature with _____)]; and

[1] *Second Proposition:* That the defendant used [(a deadly weapon other than by the discharge of a firearm) (an air rifle)].

[or]

[2] *Second Proposition:* That the defendant wore a [(hood) (robe) (mask)] to conceal his identity.

[or]

[3] *Second Proposition:* That the defendant knowingly [(shined) (flashed)] a [(laser gunsight) (laser device)] [(attached to a firearm) (used in concert with a firearm)] so that the laser beam struck upon or against _____.

[or]

[4] *Second Proposition:* That the defendant knowingly [(video) (audio)] recorded the offense with the intent to disseminate the recording.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(f) (West 2016) (formerly 720 ILCS 5/12-4.2 (West 1992)).

Give Instruction 11.117.

When applicable, give Instruction 4.35 defining the term “air rifle.”

Insert in the blanks the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction, although it does need to be included in Instruction 11.117 (see the Committee Note to Instruction 11.117).

Use applicable subparagraphs, and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.119 Definition Of Aggravated Battery—Based On Certain Conduct

A person commits the offense of aggravated battery, other than by discharge of a firearm, when he

[1] knowingly, other than as authorized by the Illinois Controlled Substances Act, delivers a controlled substance to another and any person experiences [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of any amount of that controlled substance.

[or]

[2] knowingly [(administers to an individual) (causes an individual to take)] [(without the individual's consent) (by threat) (by deception)] for other than medical purposes, any [(intoxicating) (poisonous) (stupefying) (narcotic) (anesthetic) (controlled)] substance.

[or]

[3] knowingly, for other than medical purposes, gives to another person any food that contains any [(substance) (object)] that is intended to cause physical injury if eaten.

[or]

[4] knowingly [(causes) (attempts to cause)] a [(correctional institutional) (Department of Human Services)] employee to come into contact with [(blood) (seminal fluid) (urine) (feces)] by [(throwing) (tossing) (expelling)] the [(fluid) (material)] and the defendant is [(an inmate of a penal institution) ([a sexually (violent) (dangerous) person] in the custody of the Department of Human Services)].

Committee Note*Instruction and Committee Note Approved April 13, 2016*

720 ILCS 5/12-3.05(g) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

The current aggravated battery statute, 720 ILCS 5/12-3.05 has seven separate categories: (1) Offense based on injury; (2) Offense based on injury to a child or person with an intellectual disability; (3) Offense based on location or conduct; (4) Offense based on status of victim; (5) Offense based on use of firearm; (6) Offense based on use of a weapon or device; and, (7) Offense based on certain conduct. There are separate sets of jury instructions for each category.

Give Instruction 11.119 when the defendant is charged under paragraph (g) of 720 ILCS 5/12-3.05.

Give Instruction 11.120.

When applicable, give Instruction 4.26 defining “correctional institution employee.”

When the Aggravated Battery statute was reorganized by P.A. 96-1551, two then-existing sections of Aggravated Battery and two new offenses were placed in this Section 720 ILCS 5/12-3.05(g)—Aggravated Battery Based On Certain Conduct. For offenses contained in [2] or [3] which occurred prior to the new Aggravated

Battery statute’s effective date of July 1, 2011, refer to IPI’s 11.17–11.20 that were in effect prior to July 1, 2011.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012 (720 ILCS 5/7-1 *et seq.*). See *People v. Worsham*, 26 Ill. App. 3d 767, 326 N.E.2d 134 (1st Dist. 1975).

Use applicable paragraphs and bracketed material.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.120 Issues In Aggravated Battery—Based On Certain Conduct

To sustain the charge of aggravated battery, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly delivered a controlled substance to _____; and

Second Proposition: That the defendant was not authorized under the Illinois Controlled Substances Act to deliver the controlled substance to _____; and

Third Proposition: That _____ experienced [(great bodily harm) (permanent disability)] as a result of the [(injection) (inhalation) (ingestion)] of any amount of the controlled substance.

[or]

[2] *First Proposition:* That the defendant knowingly [(administered to _____) (caused _____ to take)] [(an intoxicating) (a poisonous) (a stupefying) (a narcotic) (an anesthetic) (a controlled)] substance; and

Second Proposition: That _____ [(did not consent) (was threatened by the defendant) (was deceived by the defendant)]; and

Third Proposition: That the defendant acted for other than medical purposes.

[or]

[3] *First Proposition:* That the defendant knowingly gave food to another person; and

Second Proposition: That the food contained any [(substance) (object)] intended to cause physical injury if eaten; and

Third Proposition: That the defendant knew the food contained such [(a substance) (an object)].

[or]

[4] *First Proposition:* That the defendant knew _____ to be [(correctional institutional) (Department of Human Services)], and

Second Proposition: That the defendant knowingly [(caused) (attempted to cause)] _____ to come into contact with [(blood) (seminal fluid) (urine) (feces)], and

Third Proposition: That the defendant did so by [(throwing) (tossing) (expelling)] the [(fluid) (material)]; and

Fourth Proposition: That the defendant is [(an inmate of a penal institution) ((a sexually (violent) (dangerous)) person in the custody of the Department of Human Services)].

If you find from your consideration of all the evidence that the State has proved each one of these propositions beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that the State has not proved any one of these propositions beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 13, 2016

720 ILCS 5/12-3.05(g) (West 2016) amended by P.A. 96-1551, effective July 1, 2011.

Give Instruction 11.119.

When applicable, give Instruction 4.26 defining “correctional institution employee.”

In the first set of propositions, bracketed [1], the person that received the controlled substance from the defendant does not necessarily have to be the same person that experienced great bodily harm or permanent disability from using the controlled substance. Insert in the blanks in the First Proposition and the Second Proposition of the first set of propositions the name of the person receiving the controlled substance from the defendant. In the Third Proposition of the first set of propositions, insert the name of the person who experienced the great bodily harm or permanent disability. In the second, third, and fourth sets of propositions, insert in the blanks the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, this instruction must be combined with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction, although it does need to be included in Instruction 11.119 (see the Committee Note to Instruction 11.119).

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

11.121 Definition Of False Representation To A Tattoo Or Body Piercing Business As The Parent Or Legal Guardian Of A Minor

A person commits the offense of false representation to a tattoo or body piercing business as the parent or legal guardian of a minor when a person, other than the parent or legal guardian of a person under the age of 18 years, falsely represents himself as the parent or legal guardian of the person under the age of 18 years to an owner or employee of a tattoo or body piercing business for the purpose of [(accompanying the person under the age of 18 years to a business that provides tattooing) (accompanying the person under the age of 18 years to a business that provides body piercing) (furnishing the written consent required to pierce the body of the person under the age of 18 years)].

Committee Note

Instruction and Committee Note Approved April 4, 2014.

720 ILCS 5/12-10.3 (West 2013), added by P.A. 96-1311, § 5, effective January 1, 2011.

Give Instruction 11.122.

When applicable, give Instruction 4.38, defining “tattoo.”

When applicable, give Instruction 4.39, defining “pierce.”

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.122 Issues In False Representation To A Tattoo Or Body Piercing Business As The Parent Or Legal Guardian Of A Minor

To sustain the charge of false representation to a tattoo or body piercing business as the parent or legal guardian of a minor, the State must prove the following propositions:

First Proposition: That the defendant was not the parent or legal guardian of _____; and

Second Proposition: That the defendant falsely represented himself to be the parent or legal guardian of _____ to an owner or employee of a tattoo or body piercing business; and

Third Proposition: That when the defendant did so, _____ was a person under the age of 18 years; and

Fourth Proposition: That the defendant made the false representation for the purpose of [(accompanying to a business that provides tattooing) (accompanying _____ to a business that provides body piercing) (furnishing the written consent required to pierce the body of _____)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved April 4, 2014.

720 ILCS 5/12-10.3 (West 2013), added by P.A. 96-1311, § 5, effective January 1, 2011.

Give Instruction 11.121.

Insert in the blanks the name of the minor.

When applicable, give Instruction 4.38, defining “tattoo.”

When applicable, give Instruction 4.39, defining “pierce.”

720 ILCS 5/12C-40, which does not prohibit ear piercing, sets forth an exception to the offense of piercing the body of a minor. Section 12C-40 does not apply to a minor emancipated by statute or by marriage. When the defendant is charged under Section 12-10.3 with accompanying the minor to a business that provides body piercing and the defendant relies on the emancipated minor exception, the committee suggests adding the phrase “who was not or had not been married or who had not been emancipated” to the end of the third proposition.

Use applicable bracketed material.

11.123 Definition Of Aggravated Domestic Battery

A person commits the offense of aggravated domestic battery when he [without legal justification] knowingly and by any means

[1] causes [(great bodily harm) (permanent disability) (permanent disfigurement)] to any family or household member.

[or]

[2] [(makes physical contact of an insulting or provoking nature with) (causes bodily harm to)] and strangles any family or household member.

Committee Note

720 ILCS 5/12-3.3 (West 2019).

Give Instruction 11.124.

Use the phrase “without legal justification” whenever an instruction is to be given on an affirmative defense contained in Article 7 of the Criminal Code of 2012.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

11.124 Issues In Aggravated Domestic Battery

To sustain the charge of aggravated domestic battery, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly caused [(great bodily harm) (permanent disability) (permanent disfigurement)] to _____; and

Second Proposition: That _____ was then a family or household member to the defendant.

[or]

[2] *First Proposition:* That the defendant strangled _____; and

Second Proposition: That in doing so, the defendant knowingly [(caused bodily harm to) (made physical contact of an insulting or provoking nature with)] _____; and

Third Proposition: That _____ was then a family or household member to the defendant.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/12-3.3 (West 2019).

Give Instruction 11.123.

Give Instruction 11.11A, defining “family or household member.”

Give Instruction 11.107A, defining “strangle,” when applicable.

The Committee considered whether a person could commit the offense of aggravated domestic battery causing great bodily harm, permanent disability or disfigurement based upon making physical contact of an insulting or provoking nature, and believes that in these circumstances the defendant inherently causes bodily harm; as a result, including language whether the conduct was insulting or provoking would be unnecessary and confusing.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without legal justification” in Instruction 11.123 (see Committee Note to Instruction 11.123), and this instruction must be combined with the appropriate instructions from Chapter 24–25.00. As the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without legal justification, the Committee has concluded that the phrase “without legal justification” need not be used in this issues instruction.

Insert in the blanks the name of the victim.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Chapter 12.00

EAVESDROPPING

SYNOPSIS

- 12.01 Definition Of Eavesdropping—Use Of Eavesdropping Device (Until December 15, 1994)
- 12.01X Definition Of Eavesdropping—Use Of Eavesdropping Device (As Of December 15, 1994)
- 12.02 Issues In Eavesdropping—Use Of Eavesdropping Device (Until December 15, 1994)
- 12.02X Issues In Eavesdropping—Use Of Eavesdropping Device (As Of December 15, 1994)
- 12.03 Definition Of Eavesdropping—Use Or Divulgence Of Information (Until December 15, 1994)
- 12.03X Definition Of Eavesdropping—Use Or Divulgence Of Information (As Of December 15, 1994)
- 12.04 Issues In Eavesdropping—Use Or Divulgence Of Information (Until December 15, 1994)
- 12.04X Issues In Eavesdropping—Use Or Divulgence Of Information (As Of December 15, 1994)
- 12.05 Definition Of Eavesdropping Device
- 12.05A Definition Of Known By The Parties To Be Present
- 12.05B Definition Of Conversation

12.01 Definition Of Eavesdropping—Use Of Eavesdropping Device (Until December 15, 1994)

A person commits the offense of eavesdropping by use of an eavesdropping device when he uses an eavesdropping device to hear or record all or any part of any conversation without the consent of all parties to the conversation and is not a party to the conversation or known by the parties to be present during the conversation and the parties intend their conversation to be private under circumstances justifying that expectation.

Committee Note

720 ILCS 5/14-2(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 14-2(a) (1991)), amended by P.A. 85-1203, effective January 1, 1989.

Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.01X. See Committee Note to Instruction 12.01X.

Give Instruction 12.02.

Give Instructions 12.05, defining the term “eavesdropping device,” and 12.05A, defining the phrase “known by the parties to be present.”

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the *Illinois Supreme Court* in *People v. Beardsley*, 115 Ill. 2d 47, 104 Ill. Dec. 789, 503 N.E.2d 346 (1986). In *Beardsley*, the court held that the primary factors in determining whether a violation of the statute occurred were whether the parties intended their conversation to be private and whether there were circumstances justifying that expectation. Under this test, the court found no statutory prohibition against the surreptitious recording of a conversation by a party to that conversation or one known by the parties to be present during the conversation. The court reasoned that since a person could repeat from memory what he heard during the conversation there could be no invasion of an “expectation of privacy” by that person merely preserving an accurate account of the conversation by use of a recording device. See *Bender v. Board of Fire and Police Comm’rs of Village of Dolton*, 183 Ill. App. 3d 562, 131 Ill. Dec. 881, 539 N.E.2d 234 (1st Dist. 1989); *Smith v. Associated Bureaus, Inc.*, 177 Ill. App. 3d 286, 126 Ill. Dec. 616, 532 N.E.2d 301 (1st Dist. 1988).

Thus, in addition to the two elements of the offense appearing on the face of the eavesdropping statute, namely, (1) the use of an eavesdropping device to hear or record a conversation, and (2) the absence of consent of all parties to the conversation, the court found implicit in the statute three additional elements. These additional elements are: (3) an intention that the conversation be private, (4) circumstances justifying the privacy expectation, and (5) the absence of the defendant from the conversation as a party or otherwise. All five elements have been incorporated into this instruction.

Beardsley does not address the situation where a defendant is equipped with a transmitter instead of a recorder thereby allowing the conversation to be overheard

or intercepted by a third person. See *Beardsley*, 115 Ill. 2d at 59, 503 N.E.2d at 352, 104 Ill. Dec. at 795. The Committee takes no position regarding instructions to be given in such cases.

Law enforcement officers are exempt from the provisions of the eavesdropping statute (1) in certain emergency situations enumerated in Chapter 720, Section 14-3(g), and (2) when the officers are acting under the authority of Chapter 720, Article 108A. Officers are also exempt when acting pursuant to Chapter 720, Article 108B, P.A. 85-1203, effective January 1, 1989, unless they intercept a "privileged communication" as that term is defined in Section 108B-1(q). See Section 108B-6.

If charged with "interception of a privileged communication," the officer may interpose the good faith affirmative defense established in Section 14-2(c). When instructing on this affirmative defense, it will be necessary to define certain terms appearing in the statute establishing the defense in accordance with the definitions provided in Section 108B-1(a) through (q).

12.01X Definition Of Eavesdropping—Use Of Eavesdropping Device (As Of December 15, 1994)

A person commits the offense of eavesdropping by use of an eavesdropping device when he uses an eavesdropping device to hear or record all or any part of any conversation without the consent of all the parties to the conversation.

Committee Note

720 ILCS 5/14-2(a) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 14-2(a) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.02X.

Give Instruction 12.05, defining the term “eavesdropping device,” and Instruction 12.05B, defining the word “conversation.”

The Committee believes that P.A. 88-677, effective December 15, 1994, was intended to broaden the coverage of the eavesdropping statute, contrary to the interpretation the supreme court gave to an earlier version of that statute in *People v. Beardsley*, 115 Ill. 2d 47, 53, 104 Ill. Dec. 789, 792-93, 503 N.E.2d 346, 349-50 (1986). The definition of the word “conversation” added to the statute by P.A. 88-677 includes “any oral communication *** regardless of whether [any] of the parties expected their communication to be of a private nature ***.” This definition conflicts with Beardsley’s holding that the parties must have intended their conversation to be private. Accordingly, this instruction should be used for all eavesdropping charges arising on or after December 15, 1994.

12.02 Issues In Eavesdropping—Use Of Eavesdropping Device (Until December 15, 1994)

To sustain the charge of eavesdropping by use of an eavesdropping device, the State must prove the following propositions:

First Proposition: That the defendant knowingly used an eavesdropping device to [(hear) (record)] all or any part of a conversation; and

Second Proposition: That the defendant did so without the consent of all the parties to the conversation; and

Third Proposition: That the defendant was not a party to the conversation; and

Fourth Proposition: That the defendant was not known by the parties to be present during the conversation; and

Fifth Proposition: That the parties to the conversation intended the conversation to be private; and

Sixth Proposition: That the circumstances surrounding the conversation justified the parties' expectation that the conversation would be private.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(a) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 14-2(a) (1991)).

Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.01X. See Committee Note to Instruction 12.02X.

Give Instruction 12.01.

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the *Illinois Supreme Court in People v. Beardsley*, 115 Ill. 2d 47, 104 Ill. Dec. 789, 503 N.E.2d 346 (1986). See Committee Note to Instruction 12.01.

See Instruction 12.05A, defining the term “known by the parties to be present.”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.02X Issues In Eavesdropping—Use Of Eavesdropping Device (As Of December 15, 1994)

To sustain the charge of eavesdropping by use of an eavesdropping device, the State must prove the following propositions:

First Proposition: That the defendant knowingly used an eavesdropping device to hear or record all or any part of a conversation; and

Second Proposition: That the defendant did so without the consent of all parties to the conversation.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(a) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 14-2(a) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.01X.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.03 Definition Of Eavesdropping—Use Or Divulgence Of Information (Until December 15, 1994)

A person commits the offense of eavesdropping by use or divulgence of information when he uses or divulges any information which he knows or reasonably should know was obtained through use of an eavesdropping device without consent of all parties to the conversation by a person not a party to the conversation or known by the parties to be present during the conversation and the parties intended their conversation to be private under circumstances justifying that expectation.

Committee Note

720 ILCS 5/14-2(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 14-2(b) (1991)), amended by P.A. 85-1203, effective January 1, 1989.

Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.03X. See Committee Note to Instruction 12.01X.

Give Instruction 12.04.

Give Instruction 12.05, defining the term “eavesdropping device,” and 12.05A, defining the term “known by the parties to be present.”

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in *People v. Beardsley*, 115 Ill. 2d 47, 104 Ill. Dec. 789, 503 N.E.2d 346 (1986). For a discussion of the issues raised in *Beardsley*, see the Committee Note to Instruction 12.01.

Law enforcement officers are exempt from the provisions of the eavesdropping statute (1) in certain emergency situations enumerated in Section 14-3(g), and (2) when the officers are acting under the authority of Article 108A. Officers are also exempt when acting pursuant to Chapter 38, Article 108B, P.A. 85-1203, effective January 1, 1989, unless they intercept a “privileged communication” as that term is defined in Section 108B-1(q). See Section 108B-6.

If charged with “interception of a privileged communication,” the officer may interpose the good faith affirmative defense established in Section 14-2(c). When instructing on this affirmative defense, it will be necessary to define certain terms appearing in the statute establishing the defense in accordance with the definitions provided in Section 108B-1(a) through (q).

12.03X Definition Of Eavesdropping—Use Or Divulgence Of Information (As Of December 15, 1994)

A person commits the offense of eavesdropping by use or divulgence of information when he uses or divulges any information which he knows or reasonably should know was obtained through the use of an eavesdropping device without the consent of all parties to the conversation.

Committee Note

720 ILCS 5/14-2(b) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 14-2(b) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.04X.

Give Instruction 12.05, defining the term “eavesdropping device,” and Instruction 12.05B, defining the word “conversation.”

The Committee believes that P.A. 88-677, effective December 15, 1994, was intended to broaden the coverage of the eavesdropping statute, contrary to the interpretation the supreme court gave to an earlier version of that statute in *People v. Beardsley*, 115 Ill. 2d 47, 53, 104 Ill. Dec. 789, 792–93, 503 N.E.2d 346, 349–50 (1986). The definition of the word “conversation” added to the statute by P.A. 88-677 includes “any oral communication *** regardless of whether [any] of the parties expected their communication to be of a private nature ***.” This definition conflicts with *Beardsley*’s holding that the parties must have intended their conversation to be private. Accordingly, this instruction should be used for all eavesdropping charges arising on or after December 15, 1994.

12.04 Issues In Eavesdropping—Use Or Divulgence Of Information (Until December 15, 1994)

To sustain the charge of eavesdropping by use or divulgence of information, the State must prove the following propositions:

First Proposition: That the defendant used or divulged information which was obtained through use of an eavesdropping device to [(hear) (record)] all or any part of a conversation; and

Second Proposition: That, when he did so, the defendant knew or reasonably should have known that the information was obtained through the use of an eavesdropping device without the consent of all parties to the conversation; and

Third Proposition: That when he did so, the defendant knew or reasonably should have known that the information was obtained by a person not a party to the conversation; and

Fourth Proposition: That when he did so, the defendant knew or reasonably should have known that the information was obtained by a person not known by the parties to be present during the conversation; and

Fifth Proposition: That when he did so, the defendant knew or reasonably should have known that the parties to the conversation intended the conversation to be private; and

Sixth Proposition: That when he did so, the defendant knew or reasonably should have known that the circumstances surrounding the conversation justified the parties' expectation that the conversation would be private.

If you find from your consideration of all evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 14-2(b) (1991)).

Because the legislature substantially modified the eavesdropping statute in P.A. 88-677, effective December 15, 1994, do not use this instruction for offenses occurring on or after that date. Instead use Instruction 12.04X. See Committee Note to Instruction 12.01X.

Give Instruction 12.03.

This instruction has been substantially modified to conform to the interpretation of the eavesdropping statute by the Illinois Supreme Court in *People v. Beardsley*, 115 Ill. 2d 47, 104 Ill. Dec. 789, 503 N.E.2d 346 (1986). See Committee Note to Instruction 12.01.

See Instruction 12.05A, defining the phrase “known by the parties to be present.”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.04X Issues In Eavesdropping—Use Or Divulgence Of Information (As Of December 15, 1994)

To sustain the charge of eavesdropping by use or divulgence of information, the State must prove the following propositions:

First Proposition: That the defendant used or divulged any information obtained from a conversation; and

Second Proposition: That the defendant did so without the consent of all parties to that conversation; and

Third Proposition: That the defendant knew or reasonably should have known that this information was obtained through the use of an eavesdropping device.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/14-2(b) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 14-2(b) (1991)), amended by P.A. 88-677, effective December 15, 1994.

Give Instruction 12.03X.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

12.05 Definition Of Eavesdropping Device

The term “eavesdropping device” means any device capable of being used to hear or record a conversation, whether such conversation is conducted in person, by telephone, or by any other means.

Committee Note

720 ILCS 5/14-1(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 14-1(a) (1991)).

This statutory definition is slightly different from the definition of eavesdropping device found in Chapter 725, Section 108B-1(h), P.A. 85-1203, effective January 1, 1989. It may be necessary to use the definition found in Section 108B-1(h) when the jury is to be instructed on the offense of “interception of a privileged communication” pursuant to Chapter 720, Sections 14-2(a) and (c) and Chapter 725, Section 108B-1(q). See Committee Note to Instruction 12.01.

For a discussion of extension telephones as eavesdropping devices, see *People v. Shinkle*, 128 Ill. 2d 480, 132 Ill. Dec. 432, 539 N.E.2d 1238 (1989).

12.05A Definition Of Known By The Parties To Be Present

The phrase “known by the parties to be present” means that the parties to the conversation are aware that the defendant is in such proximity to one or more of them that he reasonably could be expected to hear the words spoken during the conversation.

Committee Note

This instruction should be given when the evidence presents an issue as to whether or not the defendant was known to be present during the conversation.

This definition is consistent with the underlying purpose of the eavesdropping statute to protect the parties’ privacy when they act under circumstances that entitle them to believe that the conversation is private and cannot be heard by others acting in a lawful manner. See *People v. Beardsley*, 115 Ill. 2d 47, 53, 104 Ill. Dec. 789, 792-93, 503 N.E.2d 346, 349-50 (1986).

12.05B Definition Of Conversation

The word “conversation” means any oral communication between two or more persons [regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation].

Committee Note

720 ILCS 5/14-1(d) (West 1994), added by P.A. 88-677, effective December 15, 1994.

The bracketed language appears in new subsection (d) of Section 14-2. However, because the Committee believes that cases might arise in which the bracketed language might be confusing and redundant to the jury, the Committee decided to put this language in brackets and leave the question of whether to use it to the sound discretion of the trial court.

Chapter 13.00

THEFT

SYNOPSIS

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13.01 Definition Of Theft By Unauthorized Control Of Property Not Exceeding \$500 In Value

A person commits the offense of theft when he knowingly [(obtains) (exerts)] unauthorized control over property and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C) (West 2016), as amended by P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.02.

Bracketed alternatives should be selected so that the instruction is no broader than the charging document. If an information charges “obtains” rather than “exerts,” then only “obtains” should be utilized. When the pleading is stated in the alternative (e.g., “obtains or exerts”), the instruction should be in the alternative unless the evidence fails to justify a particular alternative. The Committee takes no position on whether alternative pleading is proper under Chapter 720, Section 16-1.

When defendant is not also charged with theft of property exceeding \$500 in value, there is no need to mention the value of the property in this instruction, the issues instruction (Instruction 13.02), the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding \$500 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding \$500 in value,” instead of as simply “theft.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.01A Definition Of Theft By Unauthorized Control Of Property Not Exceeding \$500 In Value—Enhancing Factors Based Upon Governmental Property Or Location

A person commits the offense of theft when he knowingly [(obtains) (exerts)] unauthorized control over [governmental] property [while in a (school) (place of worship)] and

[1] intends to deprive the owner permanently of the use or benefit of the [governmental] property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the [governmental] property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the [governmental] property knowing such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C) and 16-1(b)(1.1) (West 2016), as amended by P.A. 91-0360, effective July 29, 1999, P.A. 94-0134, effective January 1, 2006, and P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.02A.

Bracketed alternatives should be selected so that the instruction is no broader than the charging document. If an information charges “obtains” rather than “exerts,” then only “obtains” should be utilized. When the pleading is stated in the alternative (e.g., “obtains or exerts”), the instruction should be in the alternative unless the evidence fails to justify a particular alternative. The Committee takes no position on whether alternative pleading is proper under Chapter 720, Section 16-1.

When defendant is not also charged with theft of property exceeding \$500 in value, there is no need to mention the value of the property in this instruction, the issues instruction (Instruction 13.02), the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding \$500 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding \$500 in value,” instead of as simply “theft.”

If the charge is theft of governmental property, give Instruction 13.33H, defining the term “governmental property.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and

counsel and should not be included in the instruction submitted to the jury.

13.02 Issues In Theft By Unauthorized Control Of Property Not Exceeding \$500 In Value

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C) (West 2016), as amended by P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.01.

Choose the Third Proposition which reflects the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Insert in the blank the name of the owner.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.02A Issues In Theft By Unauthorized Control Of Property Not Exceeding \$500 In Value—Enhancing Factors Based Upon Governmental Property Or Location

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the property in question was governmental property; and

[or]

Third Proposition: That when the defendant did so he was in a [(school) (place of worship)]; and

Fourth Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C) and 16-1(b)(1.1) (West 2016), as amended by P.A. 91-0360, effective July 29, 1999, P.A. 91-0134, effective January 1, 2006, and P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.01A.

Insert in the blank the name of the owner

Choose the option for the Third Proposition which is reflective of the charge against the defendant.

Choose from among the three options for the Fourth Proposition that option which is reflective of the charge against the defendant.

If the charge is theft of governmental property, give Instruction 13.33H, defining the term “governmental property.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.03 Definition Of Theft By Unauthorized Control Of Property Exceeding \$500 In Value

A person commits the offense of theft of property [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000) (exceeding \$100,000 and not exceeding \$500,000) (exceeding \$500,000) (exceeding \$500,000 and not exceeding \$1,000,000) (exceeding \$1,000,000)]—when he knowingly [(obtains) (exerts)] unauthorized control over property [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000) (exceeding \$100,000 and not exceeding \$500,000) (exceeding \$500,000) (exceeding \$500,000 and not exceeding \$1,000,000) (exceeding \$1,000,000)] in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(c) (West 2016), as amended by P.A. 93-0520, effective August 6, 2003, P.A. 96-0534, effective August 14, 2009, and P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.04.

When a charge of theft of property exceeding \$500 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

Use the bracketed material that corresponds to the value of the property in the charged offense.

When disputes about the value of the property support lesser included offenses, use the bracketed material including the phrase “and not exceeding” when a lesser included offense instruction based upon value is given. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.03A Definition Of Theft By Unauthorized Control Of Property Exceeding \$500 In Value—Enhancing Factors Based Upon Governmental Property Or Location

A person commits the offense of theft [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000)] when he knowingly [(obtains) (exerts)] unauthorized control over [governmental] property [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000)] in value [while in a (school) (place of worship)] and

[1] intends to deprive the owner permanently of the use or benefit of the [governmental] property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the [governmental] property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the [governmental] property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4.1), and 16-1(c) (West 2016), as amended by P.A. 91-0360, effective July 29, 1999, P.A. 94-0134, effective January 1, 2006, and P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.04A.

When a charge of theft of property exceeding \$500 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

If the evidence concerning the value of the property is in dispute, then separate issues and definitional instructions and verdict forms should be given to permit the jury to resolve that dispute with its verdict.

When disputes about the value of the property support lesser included offenses, use the bracketed material including the phrase “and not exceeding \$10,000” when a lesser included offense instruction based upon value is given. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses.

See Committee Note to Instruction 13.01.

If the charge is theft of governmental property, give Instruction 13.33H, defining the term “governmental property.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.04 Issues In Theft By Unauthorized Control Of Property Exceeding \$500 In Value

To sustain the charge of theft of property [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000) (exceeding \$100,000 and not exceeding \$500,000) (exceeding \$500,000) (exceeding \$500,000 and not exceeding \$1,000,000) (exceeding \$1,000,000)] in value, the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property; and

Fourth Proposition: That the property in question [(exceeded \$500) (exceeded \$500 but not \$10,000) (exceeded \$10,000) (exceeded \$10,000 but not \$100,000) (exceeded \$100,000) (exceeded \$100,000 but not \$500,000) (exceeded \$500,000) (exceeded \$500,000 but not \$1,000,000) (exceeded \$1,000,000)] in value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(c) (West 2016), as amended by P.A. 93-0520, effective August 6, 2003, P.A. 96-0534, effective August 14, 2009, and P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.03.

Choose the Third Proposition which reflects the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Insert in the blank the name of the owner.

Use applicable bracketed material.

Use the bracketed material that corresponds to the value of the property in the charged offense.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.04A Issues In Theft By Unauthorized Control Of Property Exceeding \$500 In Value—Enhancing Factors Based Upon Governmental Property Or Location

To sustain the charge of theft of [governmental] property [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000)] in value, the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the property in question was governmental property; and
[or]

Third Proposition: That when the defendant did so he was in a [(school) (place of worship)]; and

Fourth Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property; and

Fifth Proposition: That the property in question [(exceeded \$500) (exceeded \$500 but not \$10,000) (exceeded \$10,000) (exceeded \$10,000 but not \$100,000) (exceeded \$100,000)] in value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4.1), and 16-1(c) (West, 2016), as amended by P.A. 91-0360, effective July 29, 1999, P.A. 94-0134, effective

January 1, 2006, and P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.03A.

Choose the Third Proposition which reflects the charge against the defendant.

Choose the Fourth Proposition which reflects the charge against the defendant.

If the charge is theft of governmental property, give Instruction 13.33H, defining the term “governmental property.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Insert in the blank the name of the owner.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.05 Definition Of Subsequent Theft Offense

Committee Note

Committee Note Approved October 27, 2017

This instruction has been rescinded.



13.06 Issues In Subsequent Theft Offense**Committee Note**

Committee Note Approved October 27, 2017

This instruction has been rescinded.

13.07 Definition Of Theft Of A Firearm**Committee Note**

Committee Note Approved October 27, 2017

This instruction has been rescinded.

13.08 Issues In Theft Of A Firearm**Committee Note**

Committee Note Approved October 27, 2017

This instruction has been rescinded.

13.09 Definition Of Theft From The Person

A person commits the offense of theft from the person when he knowingly [(obtains) (exerts)] unauthorized control over property by taking said property from the person of another and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (West 2016).

Give Instruction 13.10.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.09A Definition Of Theft From The Person—Enhancing Factors Based Upon Governmental Property Or Location

A person commits the offense of theft from the person when he knowingly [(obtains) (exerts)] unauthorized control over [governmental] property by taking said property from the person of another [while in a (school) (place of worship)] and

[1] intends to deprive the owner permanently of the use or benefit of the [governmental] property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the [governmental] property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the [governmental] property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4.1) (West 2016), as amended by P.A. 91-0360, effective July 29, 1999, and P.A. 94-0134, effective January 1, 2006.

Give Instruction 13.10A.

If the charge is theft of governmental property, give Instruction 13.33H, defining the term “governmental property.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.10 Issues In Theft From The Person

To sustain the charge of theft from the person, the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of the property in question;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of such use or benefit; and

Fourth Proposition: That the defendant took the property in question from the person of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4) (West 2016).

Give Instruction 13.09.

Insert in the blanks the name of the owner.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.10A Issues In Theft From The Person—Enhancing Factors Based Upon Governmental Property Or Location

To sustain the charge of theft from the person, the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over the property in question; and

Third Proposition: That the property in question was governmental property;

[or]

Third Proposition: That when the defendant did so he was in a [(school) (place of worship)]; and

Fourth Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of the property in question;

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of such use or benefit; and

Fifth Proposition: That the defendant took the property in question from the person of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(1)(A), (B), and (C), and 16-1(b)(4.1) (West 2016), as amended by P.A. 91-0360, effective July 29, 1999, and P.A. 94-0134, effective January 1, 2006.

Give Instruction 13.09A.

Choose the Third Proposition which reflects the charge against the defendant.

Choose the Fourth Proposition which reflects the charge against the defendant.

If the charge is theft of governmental property, give Instruction 13.33H, defining the term “governmental property.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Insert in the blanks the name of the owner.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

**13.11 Definition Of Theft By Unauthorized Control Of Property Exceeding
\$10,000 In Value**

Committee Note

Committee Note Approved October 27, 2017

This instruction has been rescinded. Give Instruction 13.03.

13.12 Issues In Theft By Unauthorized Control Of Property Exceeding \$10,000 In Value**Committee Note**

Committee Note Approved October 27, 2017

This instruction has been rescinded. Give Instruction 13.04.

**13.13 Definition Of Theft By Unauthorized Control Of Property Exceeding
\$100,000 In Value**

Committee Note

Committee Note Approved October 27, 2017

This instruction has been rescinded. Give Instruction 13.03.

13.14 Issues In Theft By Unauthorized Control Of Property Exceeding \$100,000 In Value

Committee Note

Committee Note Approved October 27, 2017

This instruction has been rescinded. Give Instruction 13.04.

13.15 Definition Of Theft By Deception Of Property Not Exceeding \$500 In Value

A person commits the offense of theft when he knowingly obtains by deception control over property and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(2)(A), (B), and (C) (West 2016), as amended by P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.16.

When the defendant is not also charged with theft of property exceeding \$500 in value, there is no need to mention the value of the property in this instruction, the issues instruction (Instruction 13.16), the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding \$500 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding \$500 in value,” instead of as simply “theft.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.15A Definition Of Theft By Deception Of Property Not Exceeding \$500 In Value—Enhancing Factor Based Upon Posing As A Landlord Or Agent Or Employee Of The Landlord

A person commits the offense of theft when he knowingly obtains by deception by falsely posing as a [(landlord) (agent of the landlord) (employee of the landlord)] control over property in the form of a [(rent payment) (security deposit)] and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(b)(8) (West 2016), as amended by P.A. 96-0496, effective January 1, 2010, and P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.16A.

When the defendant is not also charged with theft of property exceeding \$500 in value, there is no need to mention the value of the property in this instruction, the issues instruction (Instruction 13.16), the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding \$500 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding \$500 in value,” instead of as simply “theft.”

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.16 Issues In Theft By Deception Of Property Not Exceeding \$500 In Value

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly obtained by deception control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(2)(A), (B), and (C) (West 2016), as amended by P.A. 096-1301, effective January 1, 2011.

Give Instruction 13.15.

Choose the Third Proposition which reflects the charge against the defendant.

When the defendant is not also charged with theft of property exceeding \$500 in value, there is no need to mention the value of the property in the definitional instruction (Instruction 13.15), this instruction, the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding \$500 in value, this instruction and each of the others specified in this paragraph should be modified by identifying this charge as “theft of property not exceeding \$500 in value,” instead of as simply “theft.”

Insert in the blank the name of the owner.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.



13.16A Issues In Theft By Deception Of Property Not Exceeding \$500 In Value—Enhancing Factor Based Upon Posing As A Landlord Or Agent Or Employee Of The Landlord

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly obtained by deception control over property in the form of a [(rent payment) (security deposit)]; and

Third Proposition: That in doing so the defendant falsely posed as a [(landlord) (agent of the landlord) (employee of the landlord)]; and

Fourth Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property.

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(2)(A), (B), and (C) (West 2016), as amended by P.A. 96-0496, effective January 1, 2010, and P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.15A.

Choose from the Fourth Proposition that option which reflects the charge against the defendant.

When the defendant is not also charged with theft of property exceeding \$500 in value, there is no need to mention the value of the property in the definitional instruction (Instruction 13.15), this instruction, the concluding instruction (Instruction 26.01), or the verdict forms (Instructions 26.02 and 26.05). However, when the defendant is also charged with theft of property exceeding \$500 in value, this instruction and each of the others specified in this paragraph should be modified by

identifying this charge as “theft of property not exceeding \$500 in value,” instead of as simply “theft.”

Insert in the blank the name of the owner.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.17 Definition Of Theft By Deception Of Property Exceeding \$500 In Value

A person commits the offense of theft [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000) (exceeding \$100,000 and not exceeding \$500,000) (exceeding \$500,000) (exceeding \$500,000 and not exceeding \$1,000,000) (exceeding \$1,000,000)] when he knowingly obtains by deception control over property [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000) (exceeding \$100,000 and not exceeding \$500,000) (exceeding \$500,000) (exceeding \$500,000 and not exceeding \$1,000,000) (exceeding \$1,000,000)] in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefits.

Committee Note*Instruction and Committee Note Approved October 27, 2017*

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(c) (West 2016), as amended by P.A. 93-0520, effective August 6, 2003, P.A. 94-0134, effective January 1, 2006, P.A. 96-0534, effective August 14, 2009, and P.A. 96-1301, effective January 1, 2011.

Give Instruction 13.18.

When a charge of theft of property exceeding \$500 value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

If the evidence concerning the value of the property is in dispute, then separate issues and definitional instructions and verdict forms should be given to permit the jury to resolve that dispute with its verdict.

When disputes about the value of the property support lesser included offenses, use the bracketed material including the phrase “and not exceeding \$10,000” when a lesser included offense instruction based upon value is given. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

See Committee Note to Instruction 13.01.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.17A Definition Of Theft By Deception Of Property Exceeding \$500 In Value—Enhancing Factor Based Upon Posing As A Landlord Or Agent Or Employee Of The Landlord

A person commits the offense of theft [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000)] when he knowingly obtains by deception by falsely posing as a [(landlord) (agent of the landlord) (employee of the landlord)] control over property in the form of a [(rent payment) (security deposit)] [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000)] in value and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefits.

Committee Note

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720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(b)(9), and 16-1(c) (West 2016), as amended by P.A. 96-0496, effective January 1, 2010, and P.A. 096-1301 effective January 1, 2011.

Give Instruction 13.18A.

When a charge of theft of property exceeding \$500 value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value.

If the evidence concerning the value of the property is in dispute, then separate issues and definitional instructions and verdict forms should be given to permit the jury to resolve that dispute with its verdict.

When disputes about the value of the property support lesser included offenses. Use the bracketed material including the phrase “and not exceeding \$10,000” when a lesser included offense instruction based upon value is given. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

See Committee Note to Instruction 13.01.

Use applicable paragraphs and bracketed material.

The brackets and numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.18 Issues In Theft By Deception Of Property Exceeding \$500 In Value

To sustain the charge of theft [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000) (exceeding \$100,000 and not exceeding \$500,000) (exceeding \$500,000) (exceeding \$500,000 and not exceeding \$1,000,000) (exceeding \$1,000,000)], the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly obtained by deception control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property; and

Fourth Proposition: That the property in question [(exceeded \$500) (exceeded \$500 but not \$10,000) (exceeded \$10,000 but not \$100,000) (exceeded \$100,000) (exceeded \$100,000 but not \$500,000) (exceeded \$500,000) (exceeded \$500,000 but not \$1,000,000) (exceeded \$1,000,000)] in value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(c) (West 2016), as amended by P.A. 93-0520, effective August 6, 2003, P.A. 94-0134, effective January 1, 2006, P.A. 96-0534, effective August 14, 2009, and P.A. 96-1301 effective January 1, 2011.

Give Instruction 13.17.

Choose the Third Proposition which reflects the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Insert in the blank the name of the owner.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.18A Issues In Theft By Deception Of Property Exceeding \$500 In Value—Enhancing Factor Based Upon Posing As A Landlord Or Agent Or Employee Of The Landlord

To sustain the charge of theft [(exceeding \$500) (exceeding \$500 and not exceeding \$10,000) (exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeding \$100,000)], the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant knowingly obtained by deception control over property in the form of a [(rent payment) (security deposit)]; and

Third Proposition: That in doing so the defendant falsely posed as a [(landlord) (agent of the landlord) (employee of the landlord)]; and

Fourth Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property; and

Fifth Proposition: That the property in question [(exceeded \$500) (exceeded \$500 and not \$10,000) (exceeded \$10,000) (exceeded \$10,000 but not \$100,000) (exceeded \$100,000)] in value.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(c) (West 2016), as amended by P.A. 096-1301 effective January 1, 2011.

Give Instruction 13.17A.

Choose the Fourth Proposition which reflects the charge against the defendant.

Other definitions may be appropriate. See Instructions 13.33 through 13.33H.

Insert in the blank the name of the owner.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.19 Definition Of Theft By Deception Of Property Having A Value Of \$5,000 Or More From A Victim 60 Years Of Age Or Older

A person commits the offense of theft when he by deception knowingly obtains control over property having a value of \$5,000 or more from a person sixty years of age or older and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner permanently of such use or benefit.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (West, 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (1991)).

Give Instruction 13.20.

P.A. 85-753, effective January 1, 1988, amended Chapter 720, Section 16-1 to provide that theft by deception of property valued at \$5,000 or more from a victim 60 years of age or older is a Class 2 felony, instead of a Class 3 felony.

Even though the Committee decided to include this instruction, the Committee takes no position on the question of whether either of these enhancing factors is an issue to be resolved by the jury. See *People v. Hicks*, 119 Ill. 2d 29, 115 Ill. Dec. 623, 518 N.E.2d 148 (1987); *People v. Mays*, 80 Ill. App. 3d 340, 35 Ill. Dec. 652, 399 N.E.2d 718 (3d Dist. 1980).

Other definitions may be appropriate. See Instruction 13.33 through 13.33E.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.20 Issues In Theft By Deception Of Property Having A Value Of \$5,000 Or More From A Victim 60 Years Of Age Or Older

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of the property in question; and

Second Proposition: That the defendant by deception knowingly obtained control over the property in question; and

Third Proposition: That the defendant intended to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner thereof permanently of the use or benefit of that property;

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that such [(use) (concealment) (abandonment)] probably will deprive the owner thereof permanently of the use or benefit of that property;

and

Fourth Proposition: That the property in question had a value of \$5,000 or more; and

Fifth Proposition: That _____ was 60 years of age or older.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (West, 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1(a)(2)(A), (B), and (C), and 16-1(b)(7) (1991)).

Give Instruction 13.19.

Insert in the blanks the name of the owner.

Use applicable bracketed material.

13.21 Definition Of Theft By Threat—Misdemeanor

A person commits the offense of theft when he by threat knowingly obtains control over property of the owner and

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such a manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that the owner will thereby probably be permanently deprived of its use or benefit.

Committee Note

720 ILCS 5/16-1(a)(3)(A), (B), and (C) (West, 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1(a)(3)(A), (B), and (C) (1991)).

Give Instruction 13.22.

Theft by threat can be a felony if the value of the property exceeds \$300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding \$300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding \$300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin “A person commits the offense of theft of property in excess of \$300 when he by threat knowingly obtains control over property of the owner and . . .”

Other definitions may be appropriate. See Instructions 13.33 through 13.33D and Instruction 13.33F.

Use applicable paragraphs and bracketed material.

See Committee Note to Instruction 13.01.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.22 Issues In Theft By Threat—Misdemeanor

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of the _____ in question; and

Second Proposition: That the defendant by threat knowingly obtained control over the _____; and

Third Proposition: That the defendant intended to deprive _____ permanently of the use or benefit of the _____.

[or]

Third Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the _____ in such manner as to deprive the owner permanently of such use or benefit.

[or]

Third Proposition: That the defendant [(used) (concealed) (abandoned)] the _____ knowing that _____ will thereby probably be deprived permanently of its use or benefit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(3)(A), (B), and (C) (West, 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1(a)(3)(A), (B), and (C) (1991)).

Give Instruction 13.21.

Theft by threat can be a felony if the value of the property exceeds \$300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding \$300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding \$300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin "To sustain the charge of theft of property in excess of \$300, the State must prove . . ."

See Committee Note to Instruction 13.01.

Insert in the appropriate blanks the name of the owner and the property description.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.23 Definition Of Theft By Obtaining Control Over Stolen Property—Misdemeanor

A person commits the offense of theft when he knowingly obtains control over stolen property [(knowing the property to have been stolen) (under such circumstances as would reasonably induce him to believe the property was stolen)], and he

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that the owner will thereby probably be permanently deprived of its use or benefit.

Committee Note

720 ILCS 5/16-1(a)(4)(A), (B), and (C) (West, 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1(a)(4)(A), (B), and (C) (1991)).

Give Instruction 13.24.

Theft by obtaining control over stolen property can be a felony if the value of the property exceeds \$300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding \$300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding \$300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin "A person commits the offense of theft of property in excess of \$300 when he . . ."

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D and Instruction 13.33G.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.24 Issues In Theft By Obtaining Control Over Stolen Property—Misdemeanor

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of the _____ in question; and

Second Proposition: That the defendant knowingly obtained control over the _____ in question; and

Third Proposition: That the defendant knew the _____ had been stolen by another;

[or]

Third Proposition: That the defendant obtained control under such circumstances as would reasonably induce him to believe the _____ was stolen;

and

Fourth Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of _____.

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the _____ in such manner as to deprive _____ permanently of the use or benefit.

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the _____ knowing that the owner will thereby probably be deprived permanently of its use or benefit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(4)(A), (B), and (C) (West, 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1(a)(4)(A), (B), and (C) (1991)).

Give Instruction 13.23.

Theft by obtaining control over stolen property can be a felony if the value of the property exceeds \$300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding \$300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either

exceeding or not exceeding \$300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin "To sustain the charge of theft of property in excess of \$300, the State must prove . . ."

Insert in the appropriate blanks the name of the owner and the property description.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.25 Definition Of Theft Of Lost Or Mislaid Property

A person commits the offense of theft of lost or mislaid property when he obtains control over lost or mislaid property, and

[1] [([knows) (learns)] the identity of the owner) ([knows) (is aware) (learns)] of a reasonable means of identifying the owner)]; and

[2] fails to take reasonable measures to restore the property to the owner; and

[3] intends to deprive the owner permanently of the use or benefit of the property.

Committee Note

720 ILCS 5/16-2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-2 (1991)).

Give Instruction 13.26.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.26 Issues In Theft Of Lost Or Mislaid Property

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of the _____ in question; and

Second Proposition: That the _____ was lost or mislaid; and

Third Proposition: That the defendant obtained control over the _____; and

Fourth Proposition: That the defendant [(knew) (learned)] the identity of the owner;
[or]

Fourth Proposition: That the defendant [(knew) (was aware) (learned)] of a reasonable means of identifying the owner;
and

Fifth Proposition: That the defendant failed to take reasonable measures to restore the _____ to _____; and

Sixth Proposition: That the defendant intended to deprive _____ permanently of the use or benefit of the _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-2 (1991)).

Give Instruction 13.25.

See Committee Note to Instruction 13.01.

Insert in the appropriate blanks the name of the owner and the property description.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.27 Definition Of Theft Of Labor, Services, Or Use Of Property

A person commits the offense of theft when he obtains the temporary use of [(property) (labor) (services)] of another available only for hire

[1] by means of [(threat) (deception)].

[or]

[2] knowing that such use is without the consent of the person providing the [(property) (labor) (services)].

Committee Note

720 ILCS 5/16-3(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-3(a) (1991)).

Give Instruction 13.28.

See Committee Note to Instruction 13.01.

Other definitions may be appropriate. See Instructions 13.33, 13.33A, and 13.33C through 13.33F.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.28 Issues In Theft Of Labor, Services, Or Use Of Property

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of the [(property) (labor) (services)] in question; and

Second Proposition: That the [(property) (labor) (services)] [(was) (were)] available only for hire; and

Third Proposition: That the defendant obtained temporary use by means of [(threat) (deception)] of the [(property) (labor) (services)] in question.

[or]

Third Proposition: That the defendant knew that such use was without the consent of the person providing the [(property) (labor) (services)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-3(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-3(a) (1991)).

Give Instruction 13.27.

This instruction has been altered in substance from that contained in the original volume of these instructions. The Committee believes that the State must prove, in addition to the first two propositions, either that the property, labor, or services were obtained by threat or deception, *or* that the defendant knew that his use was without consent. If knowledge of non-consent existed, threat or deception need not be proved. Theft of services frequently does not involve either deception or threat.

See Committee Notes to Instructions 13.01 and 13.27.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.29 Definition Of Theft Of Rented Or Leased Personal Property

A person commits the offense of theft when he [(rents or leases [(a motor vehicle) (a _____ exceeding \$500 in value)]] (obtains a motor vehicle through a “driveaway” service mode of transportation)] under an agreement in writing which provides for the return of the [(vehicle) (_____)] to a particular place at a particular time, and thereafter, without good cause, wilfully fails to return the [(vehicle) (_____)] to that place within the time specified, and is thereafter served or sent a written demand mailed to the last known address, made by certified mail return receipt requested, to return such [(vehicle) (_____)] within 3 days from the mailing of the written demand, and who, without good cause, wilfully fails to return the [(vehicle) (_____)] to any place of business of the lessor within such period.

Committee Note

720 ILCS 5/16-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 16-3(b) (1991)), amended by P.A. 82-288, effective August 1, 1981; P.A. 83-1048, effective July 1, 1984; and P.A. 84-800, effective January 1, 1986.

Give Instruction 13.30.

Use applicable bracketed material.

Insert in the blank the type of personal property if other than a motor vehicle.

See Committee Note to Instruction 13.01.

Give Instruction 23.43B, defining “motor vehicle,” when there is a question as to whether the object leased was a motor vehicle if the charging document alleges only that the defendant obtained and did not return a motor vehicle.

13.30 Issues In Theft Of Rented Or Leased Personal Property

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That the defendant [(rented or leased [(a motor vehicle) (a _____ exceeding \$500 in value)]) (obtained a motor vehicle through a “driveaway” mode of transportation)] under an agreement in writing which provided for the return of the [(vehicle) (_____)] to a particular place at a particular time; and

Second Proposition: That the defendant without good cause wilfully failed to return the [(vehicle) (_____)] to that place within the time specified; and

Third Proposition: That the defendant thereafter was served or sent a written demand mailed to the last known address, made by certified mail return receipt requested, to return such [(vehicle) (_____)] within 3 days from the mailing of the written demand; and

Fourth Proposition: That the defendant without good cause wilfully failed to return the [(vehicle) (_____)] to any place of business of the lessor within such period.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-3(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-3(b) (1991)),

Give Instruction 13.29.

See Committee Notes to Instructions 13.01 and 13.29.

Insert in the blank the type of personal property if other than a motor vehicle.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.31 Definition Of Unlawful Subleasing Of A Motor Vehicle

A person commits the offense of unlawful subleasing of a motor vehicle when he [(intentionally) (knowingly) (recklessly)]

[1] [(obtains) (exercises control over)] a motor vehicle and then [(sells) (transfers) (assigns) (leases)] the motor vehicle to another person without first obtaining written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)] and receives [(compensation) (consideration)] for the [(sale) (transfer) (assignment) (lease)] of the motor vehicle when he is not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transfers any right of interest in the motor vehicle.

[or]

[2] [(assists) (causes) (arranges)] the [(actual) (purported)] [(sale) (transfer) (assignment) (lease)] of a motor vehicle to another person without first obtaining written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)] and receives [(compensation) (consideration)] for [(assisting) (causing) (arranging)] the [(sale) (transfer) (assignment) (lease)] of the motor vehicle when he is not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transfers any right of interest in the motor vehicle.

Committee Note

625 ILCS 5/6-305.1 (West 1999) (formerly Ill. Rev. Stat. ch. 951/2, § 6-305.1 (1991)), added by P.A. 86-748, effective July 1, 1990.

Give Instruction 13.32.

Use the mental state that conforms to the allegation in the charge. See *People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Section 6-305.1 sets forth an exception to the offense of unlawful subleasing of a motor vehicle. The statute does not apply when the defendant is acting upon the request of his employer. If the defendant relies upon this exception, it will be necessary to give additional instructions.

13.32 Issues In Unlawful Subleasing Of A Motor Vehicle

To sustain the charge of unlawful subleasing of a motor vehicle, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(obtained) (exercised control)] over a motor vehicle; and

Second Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(sold) (transferred) (assigned) (leased)] the motor vehicle to another person; and

Third Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] did not obtain written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)]; and

Fourth Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] received [(compensation) (consideration)] for the [(sale) (transfer) (assignment) (lease)] of the motor vehicle; and

Fifth Proposition: That the defendant was not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transferred any right of interest in the motor vehicle.

[or]

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] [(assisted) (caused) (arranged)] the [(actual) (purported)] [(sale) (transfer) (assignment) (lease)] of a motor vehicle to another person; and

Second Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] did not obtain written authorization from the [(secured creditor) (lessor) (lienholder)] for the [(sale) (transfer) (assignment) (lease)]; and

Third Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] received [(compensation) (consideration)] for [(assisting) (causing) (arranging)] the [(sale) (transfer) (assignment) (lease)] of the motor vehicle; and

Fourth Proposition: That the defendant was not a party to a [(lease contract) (conditional sale contract) (security agreement)] which transfers any right of interest in the motor vehicle.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

625 ILCS 5/6-305.1 (West 1999) (formerly Ill. Rev. Stat. ch. 951/2, § 6-305.1 (1991)), added by P.A. 86-748, effective July 1, 1990.

Give Instruction 13.31.

Use the first set of propositions if this offense is charged under paragraph (1) of Section 6-305.1(a); use the second set of propositions if this offense is charged under paragraph (2) of Section 6-305.1(a).

Use the mental state that conforms to the allegation in the charge. See *People v. Grant*, 101 Ill. App. 3d 43, 56 Ill. Dec. 478, 427 N.E.2d 810 (1st Dist. 1981).

Section 6-305.1 sets forth an exception to the offense of unlawful subleasing of a motor vehicle. The statute does not apply when the defendant is acting upon the request of his employer. If the defendant relies on this exception, it will be necessary to give additional instructions.

13.33 Definition Of Property

The word "property" means anything of value. Property includes _____.

Committee Note

720 ILCS 5/15-1, 16D-2(d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 15-1, 16D-2(d) (1991)).

Insert in the blank the applicable item from Chapter 720, Section 15-1 or Chapter 720, Section 16D-2(d).

13.33A Definition Of Owner

The word “owner” means a person, other than the defendant, who has possession of or any other interest in the property involved [even though such interest or possession is unlawful], and without whose consent the defendant has no authority to exert control over the property.

Committee Note

720 ILCS 5/15-2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 15-2 (1991)).

Use bracketed material when an issue arises relating to whether the person from whom the property was taken had lawful possession of the property.

13.33B Definition Of Permanently Deprive

The phrase “permanently deprive” means to

[1] defeat all recovery of the property by the owner.

[or]

[2] deprive the owner permanently of the beneficial use of the property.

[or]

[3] retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return.

[or]

[4] sell, give, pledge, or otherwise transfer any interest in the property or subject it to the claim of a person other than the owner.

Committee Note

720 ILCS 5/15-3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 15-3 (1991)).

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.33C Definition Of Obtain

The word “obtain” means

[1] to bring about a transfer of interest or possession in property to [(the defendant) (another)].

[or]

[2] to secure the performance of labor or services.

Committee Note

720 ILCS 5/15-7 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 15-7 (1991)).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.33D Definition Of Obtains Or Exerts Control

The phrase “[obtains) (exerts)] control” includes, but is not limited to, the [(taking of) (carrying away of) (sale of) (conveyance of) (transfer of title to) (interest in) (possession of)] property.

Committee Note

720 ILCS 5/15-8 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 15-8 (1991)).

Use applicable bracketed material.

13.33E Definition Of Deception

The word “deception” means to knowingly

[1] create or confirm another’s impression which is false and which the defendant does not believe to be true.

[or]

[2] fail to correct a false impression which the defendant previously has created or confirmed.

[or]

[3] prevent another from acquiring information pertinent to the disposition of the property involved.

[or]

[4] sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record.

[or]

[5] promise performance which the defendant does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the owner did not intend to perform.

[or]

[6] misrepresents or conceals a material fact relating to the terms of a contract or agreement entered into with [(an elderly) (a disabled)] person or the existing or pre-existing condition of any of the property involved in such contract or agreement.

[or]

[7] uses or employs any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit [(an elderly) (a disabled)] person to enter into a contract or agreement.

Committee Note

720 ILCS 5/15-4 and 16-1.3(b)(4) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 15-4 and 16-1.3(b)(4) (1991)), added by P.A. 86-153, effective January 1, 1990.

Although paragraphs [1] through [7] can be used whenever financial exploitation of an elderly or disabled person is charged under Section 16-1.3(a), paragraphs [6] and [7] can be used *only* for financial exploitation of an elderly or disabled person.

See Instructions 13.35 and 13.36.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.33F Definition Of Threat

The word “threat” means a menace, however communicated, to

[1] inflict physical harm on the person threatened or any other person or on property.

[or]

[2] subject any person to physical confinement or restraint.

[or]

[3] commit any criminal offense.

[or]

[4] accuse any person of a criminal offense.

[or]

[5] expose any person to hatred, contempt, or ridicule.

[or]

[6] harm the credit or business repute of any person.

[or]

[7] reveal any information sought to be concealed by the person threatened.

[or]

[8] take action as an official against anyone or anything, or withhold official action, or cause such action or withholding.

[or]

[9] bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the group which the person making the threat purports to represent.

[or]

[10] testify or provide information or withhold testimony or information with respect to another’s legal claim or defense.

Committee Note

720 ILCS 5/15-5 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 15-5 (1991)).

Paragraphs [1] through [10] are not all-inclusive. If the subject of the threat is other than that described, prepare an appropriate description. See Chapter 720, Section 15-5(k).

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.33G Definition Of Stolen Property

The term “stolen property” means property over which control has been obtained by theft.

Committee Note

720 ILCS 5/15-6 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 15-6 (1991)).

13.33H Definition of Governmental Property

The term “governmental property” means funds or other property owned by the State, a unit of local government, or a school district.

Committee Note

Instruction and Committee Note Approved October 27, 2017

720 ILCS 5/15-10 (West 2016).

13.34 Inference Arising From Exclusive Possession Of Recently Stolen Property**Committee Note**

In preparing this Fourth Edition, the Committee reexamined the instruction on this subject included in the Second Edition, and the Committee continues to recommend, as it did in the Committee Note in the Second Edition and again in the Third Edition, that no instruction be given on this subject, either in a theft case or elsewhere. The Committee believes that particular types of evidence should not be singled out, but should be left to the argument of counsel. Instruction 1.03 tells the jury that attorneys may argue reasonable inferences from the evidence. The Committee believes that any possible benefit from giving this instruction is outweighed by problems resulting from its use.

13.34A Part Interest In Property No Defense

It is not a defense to the charge of theft that the defendant has an interest in the property when another person also has an interest in the same property to which the defendant is not entitled.

Committee Note

720 ILCS 5/16-4(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-4(a) (1991)).

Give this instruction when a defendant claims an interest in the property.

13.35 Definition Of Financial Exploitation Of An Elderly Or Disabled Person

A person commits the offense of financial exploitation of [(an elderly) (a disabled)] person when he stands in a position of trust and confidence with the [(elderly) (disabled)] person, and he knowingly and by [(deception) (intimidation)] obtains control over the [(elderly) (disabled)] person's property with the intent to permanently deprive the [(elderly) (disabled)] person of the use, benefit, or possession of his property[, and the value of the property is [(more than \$300) (\$5,000 or more) (\$100,000 or more)]]].

Committee Note

720 ILCS 5/16-1.3(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1.3(a) (1991)), added by P.A. 86-153, effective January 1, 1990.

Give Instructions 13.36 and 13.35D.

Also give either Instruction 13.35A or 13.35B.

Also give either Instruction 13.33E or 13.35C.

The Committee has included the value of the property as an issue to be resolved by the jury because Section 16-1.3(a) sets forth different penalties depending on the value of the property in question. Accordingly, the Committee has included the bracketed material at the end of the paragraph which should be given when the value of the property exceeds \$300.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin "A person commits the offense of financial exploitation of a disabled person in excess of \$300 when he . . ."

Use applicable bracketed material.

13.35A Definition Of Elderly Person—Offense Of Financial Exploitation

The term “elderly person” means a person 60 years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that such person is incapable of avoiding or preventing the commission of the offense.

Committee Note

720 ILCS 5/16-1.3(b)(1) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1.3(b)(1) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use this definition only when the offense of financial exploitation of an elderly person is charged.

13.35B Definition Of Disabled Person—Offense Of Financial Exploitation

The term “disabled person” means a person who suffers from a permanent physical or mental impairment resulting from disease, injury, functional disorder, or congenital condition which renders such person incapable of avoiding or preventing the commission of the offense.

Committee Note

720 ILCS 5/16-1.3(b)(2) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1.3(b)(2) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use this definition only when the offense of financial exploitation of a disabled person is charged.

13.35C Definition Of Intimidation—Offense Of Financial Exploitation

The word “intimidation” means the communication to [(an elderly) (a disabled)] person that he shall be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment.

Committee Note

720 ILCS 5/16-1.3(b)(3) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1.3(b)(3) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use this definition only when the offense of financial exploitation of an elderly or disabled person is charged.

Use applicable bracketed material.

13.35D Definition Of Trust And Confidence—Offense Of Financial Exploitation

A person stands in a position of trust and confidence with [(an elderly) (a disabled)] person when he

[1] is a parent, spouse, adult child, or other relative by blood or marriage of the elderly or disabled person.

[or]

[2] is a joint tenant or tenant in common with the [(elderly) (disabled)] person.

[or]

[3] has a legal or fiduciary relationship with the [(elderly) (disabled)] person.

Committee Note

720 ILCS 5/16-1.3(c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1.3(c) (1991)), added by P.A. 86-153, effective January 1, 1990.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.36 Issues In Financial Exploitation Of An Elderly Or Disabled Person

To sustain the charge of financial exploitation of [(an elderly) (a disabled)] person, the State must prove the following propositions:

First Proposition: That the defendant was in a position of trust and confidence with _____; and

Second Proposition: That _____ was [(an elderly) (a disabled)] person; and

Third Proposition: That the defendant knowingly and by [(deception) (intimidation)] obtained control over the property of _____; and

Fourth Proposition: That the defendant intended to permanently deprive _____ of the use, benefit, or possession of that property; and

Fifth Proposition: That the value of the property was [(more than \$300) (\$5,000 or more) (\$100,000 or more)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1.3(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16-1.3(a) (1991)), added by P.A. 86-153, effective January 1, 1990.

Give Instruction 13.35.

The Committee has included the value of the property as an issue to be resolved by the jury because Section 16-1.3(a) sets forth different penalties depending on the value of the property in question. Accordingly, the Committee has included the Fifth Proposition which should be given when the value of the property exceeds \$300.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin "To sustain the charge of financial exploitation of a disabled person in excess of \$300, the State must prove . . ."

Insert in the blanks the name of the elderly or disabled person.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.37 Definition Of Deceptive Practices

A person commits the offense of deceptive practices when he, with intent to defraud,

[1] causes another, by [(deception) (threat)] to execute a document [(disposing of property) (by which a pecuniary obligation is incurred)].

[or]

[2] being [(an officer) (a manager) (a person participating in the direction)] of a financial institution, knowingly [(receives) (permits the receipt of)] [(a deposit) (an investment)], knowing that the institution is insolvent.

[or]

[3] knowingly [(makes) (directs another to make)] a false or deceptive statement addressed to the public for the purpose of promoting the sale of [(property) (services)].

[or]

[4] with intent [(to obtain control over property) (to pay for [(property) (labor) (services)] of another) (to satisfy an obligation for payment of tax under the Retailers' Occupation Tax Act [or any other tax due to the State of Illinois])], [(issues) (delivers)] [(a check) (an order)] upon a [(real) (fictitious)] depository for the payment of money, knowing that it will not be paid by the depository.

[or]

[5] issues or delivers a check or other order upon a real or fictitious depository in an amount exceeding \$150 in payment of [(an amount owed on any credit transaction for [(property) (labor) (services)]) (the entire amount owed on any credit transaction for [(property) (labor) (services)])], knowing that it will not be paid by the depository, and thereafter fails to provide funds or credit with the depository in the face amount of the check or order within seven days of receiving actual notice from the depository or payee of the dishonor of the check or order.

Committee Note

720 ILCS 5/17-1(B) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 17-1(B) (1991)), as amended by P.A. 84-897, effective September 23, 1985.

Give Instruction 13.38.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.38 Issues In Deceptive Practices

To sustain the charge of deceptive practices, the State must prove the following propositions:

First Proposition: That the defendant caused _____ to execute a _____ [(which disposed of property) (by which a pecuniary obligation was incurred)]; and

Second Proposition: That the defendant did so by [(deception) (threat)]; and

Third Proposition: That the defendant did so with intent to defraud.

[or]

First Proposition: That the defendant was [(an officer) (a manager) (a person participating in the direction)] of a _____; and

Second Proposition: That the defendant knowingly [(received) (permitted the receipt of)] [(a deposit) (an investment)]; and

Third Proposition: That the _____ was then insolvent; and

Fourth Proposition: That the defendant then knew that the _____ was insolvent; and

Fifth Proposition: That the defendant did so with the intent to defraud.

[or]

First Proposition: That the defendant knowingly [(made) (directed another to make)] a statement addressed to the public for the purpose of promoting the sale of _____; and

Second Proposition: That the defendant did so with the intent to defraud; and

Third Proposition: That the statement was false or deceptive; and

Fourth Proposition: That the defendant knew the statement was false or deceptive.

[or]

First Proposition: That the defendant, with intent [(to obtain control over property) (to pay for [(property) (labor) (services)]) of _____] (to satisfy a tax due to the State of Illinois) [(issued) (delivered)] [(a check) (an order)] upon a [(real) (fictitious)] depository; and

Second Proposition: That the defendant knew that the [(check) (order)] would not be paid; and

Third Proposition: That the defendant did so with the intent to defraud.

[or]

First Proposition: That the defendant [(issued) (delivered)] [(a check) (an order)] upon a [(real) (fictitious)] depository; and

Second Proposition: That such [(check) (order)] was in an amount exceeding \$150 [(in payment of an amount owed on any credit transaction for [(property) (labor) (services)])] (in payment of the entire amount owed on any credit transaction for [(property) (labor) (services)]); and

Third Proposition: That the defendant knew that the [(check) (order)] would not be paid by the depository; and

Fourth Proposition: That the defendant thereafter failed to provide funds or credit with the depository in the face amount of the [(check) (order)] within seven days of receiving actual notice from the depository or payee of the dishonor of the [(check) (order)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/17-1(B) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 17-1(B) (1991)), as amended by P.A. 84-897, effective September 23, 1985.

Give Instruction 13.37.

In the first alternative set of propositions, insert in the appropriate blank the name of the victim and the document as charged.

In the second alternative set of propositions, insert in the blank a description of the financial institution as charged.

In the third alternative set of propositions, insert in the blank a description of the property or services being promoted as charged.

In the fourth alternative set of propositions, insert in the blank the name of the victim.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.38A Inference Arising From Insufficient Funds**Committee Note**

See 720 ILCS 5/17-1(B)(d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 17-1(B)(d) (1991)), as amended by P.A. 84-897, effective September 23, 1985.

Dictum in *People v. Gray*, 99 Ill. App. 3d 851, 55 Ill. Dec. 315, 426 N.E.2d 290 (5th Dist. 1981), supports the view that the legislature's use of the term "*prima facie*" is a direction to the court on when to submit the evidence to the jury and should not be translated into a jury instruction. Gray holds that the jury should not be instructed in the language of the statute about the "*prima facie*" effect of certain evidence. The term is a legal one which, according to Gray, might be read by a jury as creating a type of presumption that is constitutionally impermissible in criminal cases.

13.39 Definition Of Forgery***Use For Cases Where The Offense Is Alleged To Have Occurred
Before January 1, 2012***

A person commits the offense of forgery when he, with intent to defraud, knowingly

[1] [(makes) (alters)] a _____ apparently capable of defrauding another so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[2] [(issues) (delivers)] a _____ apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[3] possesses, with intent to [(issue) (deliver)], a _____ apparently capable of defrauding another which he knows has been made or altered so that it appears to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)].

[or]

[4] unlawfully uses the digital signature of another.

[or]

[5] unlawfully uses the signature device of another to create an electronic signature of that other person.

Committee Note

720 ILCS 5/17-3 (West 2015), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5).

Give Instruction 13.40.

When applicable, give Instruction 13.42, defining “document.”

When applicable, give Instruction 5.12, defining “digital signature.”

When applicable, give Instruction 5.13, defining “electronic signature.”

When applicable, give Instruction 5.14, defining “signature device.”

In *People v. Kent*, 40 Ill. App. 3d 256, 260 350 N.E.2d 890 (5th Dist. 1976), the appellate court found that a check was apparently capable of defrauding another where it was complete in every respect except its genuineness.

Insert in the blanks the appropriate descriptions of the documents involved, e.g., check, note, mortgage.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.



13.39A Definition Of Forgery***Use For Cases Where The Offense Is Alleged To Have Occurred
After December 31, 2011***

A person commits the offense of forgery when he, with intent to defraud, knowingly

[1] [(makes a false document) (alters any document to make it false)] and that document is apparently capable of defrauding another.

[or]

[2] [(issues) (delivers)] a [(false document) (document altered to make it false)] which he knows has been falsely made or altered and the document is apparently capable of defrauding another.

[or]

[3] possesses, with intent to [(issue) (deliver)] a [(false document) (document altered to make it false)] which he knows has been falsely made or altered and the document is apparently capable of defrauding another.

[or]

[4] unlawfully uses the digital signature of another.

[or]

[5] unlawfully uses the signature device of another to create an electronic signature of that other person.

Committee Note

720 ILCS 5/17-3 (West 2021), amended by P.A. 97-231, effective January 1, 2012.

Give Instruction 13.40A.

When giving bracketed numbers [1], [2] or [3], give Instruction 13.42 defining “document capable of defrauding another” and Instruction 13.42A defining “false document” or “document that is false.”

When giving bracketed number [4], give Instruction 5.12, defining “digital signature.”

When giving bracketed number [5], give Instruction 5.13, defining “electronic signature.”

When applicable, give Instruction 5.14, defining “signature device.”

Use applicable paragraphs and bracketed material.

The brackets and numbers are provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.40 Issues In Forgery***Use For Cases Where The Offense Is Alleged To Have Occurred
Before January 1, 2012***

To sustain the charge of forgery, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly [(made) (altered)] a _____ so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[2] *First Proposition:* That the defendant knowingly [(issued) (delivered)] a _____ which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[3] *First Proposition:* That the defendant knowingly possessed, with intent to issue or deliver a _____, which he knew had been made or altered so that it appeared to have been made [(by another) (at another time) (with different provisions) (by authority of one who did not give such authority)]; and

[or]

[4] *First Proposition:* That the defendant knowingly and unlawfully used the digital signature of another; and

[or]

[5] *First Proposition:* That the defendant knowingly and unlawfully used the signature device of another to create an electronic signature of that other person; and

Second Proposition: That the defendant did so with an intent to defraud; and

Third Proposition: That the _____ was apparently capable of defrauding another.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/17-3 (West 2015), amended by P.A. 90-575, effective March 20, 1998, which added subsection (a)(4), amended by P.A. 90-759, effective July 1, 1999, which added subsection (a)(5).

Give Instruction 13.39.

When applicable, give Instruction 13.42, defining “document.”

When applicable, give Instruction 5.12, defining “digital signature.”

When applicable, give Instruction 5.13, defining “electronic signature.”

When applicable, give Instruction 5.14, defining “signature device.”

In *People v. Smith*, 259 Ill. App. 3d 492, 500–01, 631 N.E.2d 738 (4th Dist. 1994), the appellate court concluded that the State is not required to prove that anyone was actually defrauded by the defendant’s conduct, and accordingly held that the State need not allege or prove the identity of the victim whom the defendant intended to defraud. *See also People v. Crouch*, 29 Ill. 2d 485, 486–87, 194 N.E.2d 248 (1963). Because this instruction formerly required the inclusion of the victim’s identity, the appellate court held that it misstated the law. In light of *Smith*, the Committee has deleted the victim’s identity previously required in the Second Proposition.

The bracketed numbers [1] through [5] correspond to the alternatives of the same number in Instruction 13.39, the definitional instruction for this offense. Select the alternative First Proposition that corresponds to the alternative selected from the definitional instruction.

Insert in the blanks the appropriate descriptions of the documents involved, e.g., check, note, mortgage.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

13.40A Issues In Forgery***Use For Cases Where The Offense Is Alleged To Have Occurred
After December 31, 2011***

To sustain the charge of forgery, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly [(made a false document) (altered any document to make it false)]; and

[or]

[2] *First Proposition:* That the defendant knowingly [(issued) (delivered)] a [(false document) (document altered to make it false)] which he knew had been falsely made or altered; and

[or]

[3] *First Proposition:* That the defendant knowingly possessed, with intent to [(issue) (deliver)] a [(false document) (document altered to make it false)] which he knew had been falsely made or altered; and

[or]

[4] *First Proposition:* That the defendant knowingly and unlawfully used the digital signature of another; and

[or]

[5] *First Proposition:* That the defendant knowingly and unlawfully used the signature device of another to create an electronic signature of that other person; and

Second Proposition: That the defendant did so with an intent to defraud; and

Third Proposition: That the document was apparently capable of defrauding another.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/17-3 (West 2021).

Give Instruction 13.39A.

The bracketed numbers [1] through [5] correspond to the alternatives of the same number in Instruction 13.39A, the definitional instruction for this offense. Select the alternative First Proposition that corresponds to the alternative selected from the definitional instruction.

Use applicable paragraphs and bracketed material. The brackets and numbers are

provided solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

13.41 Definition Of Value—Commercial Or Written Instrument

The word “value” of property consisting of any commercial instrument or any written instrument representing or embodying rights concerning anything of value, labor, or services or otherwise of value to the owner means

[1] the “market value” of such instrument if such instrument is negotiable and has a market value; and

[2] the “actual value” of such instrument if such instrument is not negotiable or is otherwise without a market value. [For the purpose of establishing such “actual value,” the interest of any owner or owners entitled to part or all of the property represented by such instrument, by reason of such instrument, may be shown, even if another “owner” may be named in the complaint, information, or indictment.]

Committee Note

720 ILCS 5/15-9 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 15-9 (1991)).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.41A Definition Of Value—Theft

The word “value” means the fair cash market value of the property at the time of the incident in question.

Fair cash market value is what a willing buyer would pay to a willing seller in cash for the property at the time and place of the alleged theft.

Committee Note

Where there is an issue on value and the value can make a difference between a felony and a misdemeanor, it is best for the jury to decide the issue. It is necessary, therefore, to include a definition of value.

When theft of a commercial instrument is involved, do not use this instruction. Use Instruction 13.41 instead. When the value of damaged property is involved, do not use this instruction. Instead, use Instruction 13.41B.

See *People v. Cobetto*, 66 Ill. 2d 488, 6 Ill. Dec. 907, 363 N.E.2d 854 (1977).

13.41B Definition Of Value—Damage

In considering whether the damage to the property alleged to have been damaged exceeds _____, you may consider the cost of repair or replacement cost of the property. When the repair or replacement cost exceeds the fair cash market value, then it is the fair cash market value of the goods you are to consider in deciding the amount of damages in this case. [Fair cash market value is what a willing buyer would pay to a willing seller in cash for the property at the time and place of the alleged damage.]

Committee Note

An amendment to 720 ILCS 5/21-1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 21-1 (1991)), effective January 1, 1990, provides that in cases involving felony damage to property in excess of \$300, whether the damage exceeds the statutory amount is to be resolved by the trier of fact.

Ordinarily, the damage is measured by cost of repair, but it has been held not to be a fair measure where the property value did not exceed the cost of repair. In those cases, the fair cash market value is the test. *People v. Carraro*, 67 Ill. App. 3d 81, 23 Ill. Dec. 787, 384 N.E.2d 581 (4th Dist. 1979).

Insert in the blank the applicable statutory amount.

Use applicable bracketed material.

13.42 Definition Of “Document Capable Of Defrauding Another”

The phrase “document capable of defrauding another” includes, but is not limited to, one by which any right, obligation or power with reference to any person or property may be created, transferred, altered or terminated. [The phrase also includes information that is inscribed, stored, or otherwise fixed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.] [The phrase also includes a Universal Price Code label or coin.]

Committee Note

720 ILCS 5/17-3(c) (West 2021); 5 ILCS 175/5-105 (West 2021).

Use applicable bracketed material.

13.42A Definition Of “False Document” Or “Document That Is False”

The phrases “false document” or “document that is false” includes, but is not limited to, a document whose contents are false in some material way, or that purports to have been made by another or at another time, or with different provisions, or by authority of one who did not give such authority.

Committee Note

720 ILCS 5/17-3(c-5) (West 2021); P.A. 97-231, effective January 1, 2012.

This Instruction was formerly numbered Instruction 5.15 and is otherwise unchanged.

13.43 Definition Of Retail Theft

A person commits the offense of retail theft when he knowingly

[1] [(takes possession of) (carries away) (transfers) (causes to be carried away) (causes to be transferred)] any merchandise [(displayed) (held) (stored) (offered for sale)] in a retail mercantile establishment with the intention of [(retaining such merchandise) (depriving the merchant permanently of the possession, use, or benefit of such merchandise)] without paying the full retail value of such merchandise[(.) (; and)]

[or]

[2] [(alters) (transfers) (removes)] any [(label) (price tag) (indicia of value) (marking which aids in determining value)] affixed to any merchandise [(held) (stored) (offered for sale)] in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of such merchandise[(.) (; and)]

[or]

[3] transfers any merchandise [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment from the container [(in) (on)] which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise[(.) (; and)]

[or]

[4] under-rings with the intention of depriving the merchant of the full retail value of the merchandise[(.) (; and)]

[or]

[5] removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of depriving the merchant permanently of the [(possession) (use) (benefit)] of such cart[(.) (; and)]

[or]

[6] represents to a merchant that he or another is the lawful owner of property, knowing that such representation is false, and [(conveys) (attempts to convey)] that property to a merchant who is the owner of the property in exchange for [(money) (merchandise) (credit) (other property of the merchant)] [(.) (; and)]

[or]

[7] [(uses) (possesses)] any [(theft detection shielding device) (theft detection device remover)] with the intention of using such device to deprive the merchant permanently of the [(possession) (use) (benefit)] of any merchandise [(displayed) (held) (stored) (offered for sale)] in a retail mercantile establishment without paying the full retail value of such merchandise[(.) (; and)]

[or]

[8] [(obtains) (exerts unauthorized control over)] property of the owner and thereby

intends to deprive the owner permanently of the [(use) (benefit)] of the property when a lessee of the personal property of another fails to return it to the owner, or if the lessee fails to pay the full retail value of such property to the lessor in satisfaction of any contractual provision requiring such, within 30 days after written demand from the owner for its return[(.) (; and)]

[9] the value of the property exceeds \$150.

Committee Note

720 ILCS 5/16A-3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-3 (1991)), as amended by P.A. 86-356, effective January 1, 1990, and 720 ILCS 5/16A-10.

When paragraph [1] is used, give Instruction 13.44. When paragraph [2] is used, give Instruction 13.44A. When paragraph [3] is used, give Instruction 13.44B. When paragraph [4] is used, give Instruction 13.44C. When paragraph [5] is used, give Instruction 13.44D. When paragraph [6] is used, give Instruction 13.44E. When paragraph [7] is used, give Instruction 13.44F. When paragraph [8] is used, give Instruction 13.44G.

Give Instructions 13.46 through 13.46I as applicable.

When the charge of retail theft exceeding \$150 is brought, the statute specifically states that the value of the property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding \$150. See Chapter 720, Section 16A-10. Accordingly, the Committee has included paragraph [9] which should be given when the value of the property exceeds \$150.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater offense and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$150, then this instruction would begin "A person commits the offense of retail theft in excess of \$150 when he . . ."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.44 Issues In Retail Theft By Taking Possession—Value Of \$150 Or Less—Value Exceeding \$150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That _____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly [(took possession of the merchandise) (carried away the merchandise) (transferred the merchandise) (caused the merchandise to be carried away) (caused the merchandise to be transferred)]; and

Fourth Proposition: That when he did so, the defendant intended to deprive the merchant permanently of the [(possession of) (use of) (benefit of)] the merchandise without paying the full retail value of the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded \$150].

[or]

Fourth Proposition: That the defendant intended to retain the merchandise[; and

Fifth Proposition: That the full retail value of the merchandise exceeded \$150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-3(a) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [1].

Give Instructions 13.46 through 13.46C.

When the State charges that the merchandise had a full retail value which exceeded \$150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$150, then this instruction would begin “To sustain the charge of retail theft in excess of \$150, the State must prove”

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.44A Issues In Retail Theft By Altering, Transferring, Removing Price Indicia—Value \$150 Or Less—Value Exceeding \$150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That _____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly [(altered) (transferred) (removed)] any [(label) (price tag) (indicia of value) (marking which aids in determining value)] affixed to the merchandise; and

Fourth Proposition: That the defendant attempted to purchase personally or in consort with another the merchandise at less than the full retail value; and

Fifth Proposition: That the defendant intended to deprive the merchant of the full retail value of the merchandise[]; and

Sixth Proposition: That the full retail value of the merchandise exceeded \$150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-3(b) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [2].

Give Instructions 13.46 through 13.46C.

When the State charges that the merchandise had a full retail value which exceeded \$150, use the bracketed Sixth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$150, then this instruction would begin “To sustain the charge of retail theft in excess of \$150, the State must prove”

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose

conduct he is legally responsible” after the word “defendant” in each proposition.
See Instruction 5.03.

13.44B Issues In Retail Theft By Transferring—Value Of \$150 Or Less—Value Exceeding \$150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That _____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly transferred the merchandise from the container [(in) (on)] which the merchandise was displayed to any other container; and

Fourth Proposition: That when he did so, the defendant intended to deprive the merchant of the full retail value of the merchandise; and

Fifth Proposition: That the full retail value of the merchandise exceeded \$150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-3(c) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [3].

Give Instructions 13.46 through 13.46C.

When the State charges that the merchandise had a full retail value which exceeded \$150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$150, then this instruction would begin “To sustain the charge of retail theft in excess of \$150, the State must prove”

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.44C Issues In Retail Theft By Under-Rings—Value Of \$150 Or Less—Value Exceeding \$150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That _____ was a merchant; and

Second Proposition: That the defendant knowingly under-rang intending to deprive the merchant of the full retail value of the merchandise[]; and

Third Proposition: That the full retail value of the merchandise exceeded \$150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(d) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-3(d) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [4].

Give Instructions 13.46 through 13.46B, and 13.46E.

When the State charges that the merchandise had a full retail value which exceeded \$150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$150, then this instruction would begin "To sustain the charge of retail theft in excess of \$150, the State must prove"

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.44D Issues In Retail Theft Of Shopping Cart—Value Of \$150 Or Less—Value Exceeding \$150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That _____ was a merchant; and

Second Proposition: That the defendant removed a shopping cart from the premises of the retail mercantile establishment without the consent of the merchant given at the time of such removal; and

Third Proposition: That the defendant intended to deprive the merchant permanently of the [(possession of) (use of) (benefit of)] that cart; and

Fourth Proposition: That the full retail value of the shopping cart exceeded \$150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(e) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-3(e) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [5].

Give Instruction 13.46, Instructions 13.46B through 13.46D, and Instruction 13.46F.

When the State charges that the shopping cart had a full retail value which exceeded \$150, use the bracketed Fourth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$150, then this instruction would begin “To sustain the charge of retail theft in excess of \$150, the State must prove”

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.44E Issues In Retail Theft By False Representation—Value Of \$150 Or Less—Value Exceeding \$150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That _____ was a merchant; and

Second Proposition: That the defendant represented to the merchant that he was the lawful owner of the property; and

Third Proposition: That the defendant knew such representation was false; and

Fourth Proposition: That the defendant [(conveyed) (attempted to convey)] the property to the merchant in exchange for [(money) (credit) (other property of the merchant)]]; and

Fifth Proposition: That the full retail value of the property exceeded \$150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(f) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-3(f) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [6].

Give Instructions 13.46 and 13.46B.

When the State charges that the property had a full retail value which exceeded \$150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$150, then this instruction would begin "To sustain the charge of retail theft in excess of \$150, the State must prove . . ."

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.44F Issues In Retail Theft By Theft Detection Shielding Device Or Device Remover—Value Of \$150 Or Less—Value Exceeding \$150

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That _____ was a merchant; and

Second Proposition: That the merchandise was [(displayed) (held) (stored) (offered)] for sale in a retail mercantile establishment; and

Third Proposition: That the defendant knowingly [(used) (possessed)] a [(theft detection shielding device) (theft detection device remover)]; and

Fourth Proposition: That the defendant intended to use such [(device) (device remover)] to permanently deprive the merchant of the [(possession of) (use of) (benefit of)] the merchandise without paying the full retail value of the merchandise; and

Fifth Proposition: That the full retail value of the merchandise exceeded \$150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(g) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-3(g) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [7].

Give Instructions 13.46 through 13.46C, 13.46G, and 13.46H.

When the State charges that the property had a full retail value which exceeded \$150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$150, then this instruction would begin “To sustain the charge of retail theft in excess of \$150, the State must prove”

Insert in the blank the name of the merchant.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.E

13.44G Issues In Retail Theft—Lessee

To sustain the charge of retail theft, the State must prove the following propositions:

First Proposition: That _____ was the owner of property; and

Second Proposition: That the defendant leased the property from the owner; and

Third Proposition: That the defendant knowingly [(obtained) (exerted)] unauthorized control over that property by knowingly failing to return that property to the owner while intending to deprive the owner permanently of the [(use of) (benefit of)] that property by knowingly failing to return that property to the owner;

[or]

Third Proposition: That the defendant [(obtained) (exerted)] unauthorized control over that property by knowingly failing to pay the full retail value of that property pursuant to a lease contracted while intending to deprive the owner permanently of the [(use of) (benefit of)] that property by knowingly failing to pay the full retail value of that property pursuant to a contractual provision;

and

Fourth Proposition: That 30 days or more expired after the owner gave written demand to the defendant to return the property[]; and

Fifth Proposition: That the full retail value of the property exceeded \$150].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16A-3(h) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-3(h) (1991)), as amended by P.A. 86-356, effective January 1, 1990.

Give Instruction 13.43, paragraph [8].

Give Instruction 13.46.

When the State charges that the property has a full retail value which exceeded \$150, use the bracketed Fifth Proposition. See Chapter 720, Section 16A-10.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$150, then this instruction would begin "To sustain the charge of retail theft in excess of \$150, the State must prove . . ."

The Committee points out that the statute provides that a notice in writing, by registered mail, to the lessee at the address given by lessee and shown on the leasing agreement constitutes proper demand. The Committee takes no position on whether or not personal service on the lessee of the demand or a different type of mailing of the demand constitutes proper demand.

Insert in the blank the name of the owner.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.45 Presumption Arising From Concealed Merchandise

If you find beyond a reasonable doubt that the defendant concealed upon his person or among his belongings, unpurchased merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment, and that the defendant removed that merchandise beyond the last known station for receiving payments for that merchandise in the retail mercantile establishment, you may presume that the defendant acted with the intention of retaining that merchandise or with the intention of depriving the merchant permanently of the possession, use, or benefit of that merchandise without paying the full retail value of that merchandise.

You are never required to make this presumption. It is for the jury to determine whether the presumption should be made.

Concealment of merchandise upon the defendant's person may be reasonably explained by the facts and circumstances in evidence.

Removal of merchandise beyond the last known station for receiving payments may be reasonably explained by the facts and circumstances in evidence.

[In considering whether concealment of merchandise upon the defendant's person or removal of merchandise beyond the last known station for receiving payments in the retail mercantile establishment has been reasonably explained, you are reminded that the accused need not testify nor produce evidence.]

Committee Note

720 ILCS 5/16A-4 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-4 (1991)).

The Committee recommends that no instruction be given on this subject for the reasons set forth in *People v. Killings*, 103 Ill. App. 3d 1074, 59 Ill. Dec. 630, 431 N.E.2d 1387 (4th Dist. 1982).

If for some reason the court determines that the instruction should be given, the judge should first determine as a matter of law whether the jury could find concealment or removal.

The last bracketed paragraph should be given only at the request of the defendant.

13.45A Definition Of Conceal Merchandise

The term “conceal merchandise” means that, although there may be some notice of its presence, that merchandise is not visible through ordinary observation.

Committee Note

720 ILCS 5/16A-2.1 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.1 (1991)).

13.46 Definition Of Full Retail Value

The phrase "full retail value" means the merchant's stated or advertised price of the merchandise.

Committee Note

720 ILCS 5/16A-2.2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.2 (1991)).

13.46A Definition Of Merchandise

The word “merchandise” means any item of tangible personal property.

Committee Note

720 ILCS 5/16A-2.3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.3 (1991)).

13.46B Definition Of Merchant

The word "merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchise, or independent contractor of such owner or operator.

Committee Note

720 ILCS 5/16A-2.4 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.4 (1991)).

13.46C Definition Of Retail Mercantile Establishment

The phrase “retail mercantile establishment” means any place where merchandise is displayed, held, stored, or offered for sale to the public.

Committee Note

720 ILCS 5/16A-2.9 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.9 (1991)).

13.46D Definition Of Premises Of A Retail Mercantile Establishment

The phrase "premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment, any common use areas in shopping centers, and all parking areas set aside by a merchant or on behalf of a merchant for parking of vehicles for the convenience of the patrons of such retail mercantile establishment.

Committee Note

720 ILCS 5/16A-2.8 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.8 (1991)).

13.46E Definition Of Under-Ring

The word “under-ring” means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

Committee Note

720 ILCS 5/16A-2.11 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.11 (1991)).

13.46F Definition Of Shopping Cart

The term "shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drug stores, or other retail mercantile establishments for the use of the public in transporting commodities in the stores and markets and, incidentally, from the stores to a place outside the store.

Committee Note

720 ILCS 5/16A-2.10 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.10 (1991)).F

13.46G Definition Of Theft Detection Shielding Device

The phrase “theft detection shielding device” means any laminated or coated bag or device designed and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

Committee Note

720 ILCS 5/16A-2.12 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.12 (1991)).

13.46H Definition Of Theft Detection Device Remover

The phrase "theft detection device remover" means any tool or device specifically designed and intended to be used to remove any theft detection device from any merchandise.

Committee Note

720 ILCS 5/16A-2.13 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.13 (1991)).

13.46I Definition Of Person

The word “person” means any natural person or individual.

Committee Note

720 ILCS 5/16A-2.6 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16A-2.6 (1991)).

13.47 Definition Of Unauthorized Possession Of Identification Document

A person commits the offense of unauthorized possession of identification document when he possesses for an unlawful purpose another person's identification document issued by the Illinois Department of Public Aid.

Committee Note

305 ILCS 5/8A-5A (West 1999) (formerly Ill. Rev. Stat. ch. 23, § 8A-5A (1991)), added by P.A. 86-1012, effective July 1, 1990.

Give Instructions 13.47A and 13.48.

13.47A Definition Of Identification Document

The term “identification document” includes, but is not limited to, an authorization to participate in the federal food stamp program or the federal surplus food commodities program, or a card or other document which identifies a person as being entitled to public aid under the Illinois Public Aid Code.

Committee Note

305 ILCS 5/8A-5A (West 1999) (formerly Ill. Rev. Stat. ch. 23, § 8A-5A (1991)), added by P.A. 86-1012, effective July 1, 1990.

13.48 Issues In Unauthorized Possession Of Identification Document

To sustain the charge of unauthorized possession of identification document, the State must prove the following propositions:

First Proposition: That the defendant possessed an identification document issued by the Illinois Department of Public Aid; and

Second Proposition: That the identification document in question was another person's identification document; and

Third Proposition: That the defendant possessed this identification document for an unlawful purpose, namely _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

305 ILCS 5/8A-5A (West 1999) (formerly Ill. Rev. Stat. ch. 23, § 8A-5A (1991)), added by P.A. 86-1012, effective July 1, 1990.

Give Instructions 13.47 and 13.47A.

Insert in the blank the alleged unlawful purpose.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.49 Definition Of Computer Tampering

A person commits the offense of computer tampering when he knowingly and [(without the authorization of a computer's owner) (in excess of the authority granted to him by the computer's owner)]

[1] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)].

[or]

[2] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)], and obtains [(data) (services)].

[or]

[3] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)], and [(damages the computer) (destroys the computer) (alters a computer program) (deletes a computer program) (removes a computer program) (alters data) (deletes data) (removes data)].

[or]

[4] [(inserts) (attempts to insert)] a program into a [(computer) (computer program)] [(knowing) (having reason to believe)] that such program contains information or commands that [(will) (may)] [(damage that computer or any other computer subsequently accessing or being accessed by that computer) (destroy that computer or any other computer subsequently accessing or being accessed by that computer) (alter a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (delete a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (remove a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such program)].

Committee Note

720 ILCS 5/16D-3 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-3 (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instructions 13.55 through 13.55D when appropriate.

When the first paragraph is used, give Instruction 13.50 (Issues in Computer Tampering—Accessing). When the second paragraph is used, give Instruction 13.50A (Issues in Computer Tampering—Obtaining Data or Services). When the third paragraph is used, give Instruction 13.50B (Issues in Computer Tampering—Damage). When the fourth paragraph is used, give Instruction 13.50C (Issues in Computer Tampering—Inserting a Program).

The Committee notes the use of quotation marks around the word "program" in Chapter 720, Section 16-D-3(a)(4), when an unauthorized "program" is inserted into a computer or a computer program or an attempt is made to insert an unauthorized "program" into a computer or a computer program. The Committee suggests the use of neutral terminology when instructing on the unauthorized "program."

The word "owner" is defined in Instruction 13.33A.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.50 Issues In Computer Tampering—Accessing

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed a program) (caused a program to be accessed) (accessed data) (caused data to be accessed)]; and

Second Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Third Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-3(a)(1) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-3(a)(1) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [1].

Give Instructions 13.55 through 13.55C.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.50A Issues In Computer Tampering—Obtaining Data Or Services

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed a program) (caused a program to be accessed) (accessed data) (caused data to be accessed)]; and

Second Proposition: That the defendant obtained [(data) (services)]; and

Third Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-3(a)(2) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-3(a)(2) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [2].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.50B Issues In Computer Tampering—Damage

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed a program) (caused a program to be accessed) (accessed data) (caused data to be accessed)]; and

Second Proposition: That the defendant [(damaged the computer) (destroyed the computer) (altered a computer program) (altered data) (deleted a computer program) (deleted data) (removed a computer program) (removed data)]; and

Third Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-3(a)(3) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-3(a)(3) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [3].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.50C Issues In Computer Tampering—Inserting A Program

To sustain the charge of computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(inserted) (attempted to insert)] a program into a [(computer) (computer program)]; and

Second Proposition: That the defendant [(knew) (had reason to believe)] that the program which he [(inserted) (attempted to insert)] contained information or commands that [(would) (might)] [(damage that computer or any other computer subsequently accessing or being accessed by that computer) (destroy that computer or any other computer subsequently accessing or being accessed by that computer) (alter a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (delete a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (remove a computer program or data from that computer or any other computer program or data in a computer subsequently accessing or being accessed by that computer) (cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such program)]; and

Third Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-3(a)(4) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-3(a)(4) (1991)), as amended by P.A. 86-762, effective January 1, 1990.

Give Instruction 13.49, paragraph [4].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer tampering and agreed that the defendant must know that he is inserting or attempting to insert a program, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

See Committee Note to Instruction 13.49, regarding the word “program.”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.51 Definition Of Aggravated Computer Tampering

A person commits the offense of aggravated computer tampering when he, in committing computer tampering, knowingly

[1] causes [(disruption of) (interference with)] vital [(services of) (operations of)] [(state government) (local government) (a public utility)].

[or]

[2] creates a strong probability of death or great bodily harm to one or more individuals.

Committee Note

720 ILCS 5/16D-4 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-4 (1991)), as amended by P.A. 86-820, effective September 7, 1989.

Give Instructions 13.49 and 13.52.

Give Instructions 13.55 through 13.55E.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.52 Issues In Aggravated Computer Tampering

To sustain the charge of aggravated computer tampering, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (caused a computer program or data to be accessed)]; and

Second Proposition: That in doing so, the defendant [(damaged a computer) (destroyed a computer) (altered a computer program or data) (deleted a computer program or data) (removed a computer program or data)]; and

Third Proposition: That the defendant acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fourth Proposition: That the defendant knew that he acted [(without the authorization of the computer's owner) (in excess of the authority granted to him by the computer's owner)]; and

Fifth Proposition: That the defendant knowingly caused [(deception of) (interference with)] vital [(services of) (operations of)] [(state government) (local government) (a public utility)].

[or]

Fifth Proposition: That the defendant knowingly created a strong probability of death or great bodily harm to one or more individuals.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-4 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-4 (1991)), as amended by P.A. 86-820, effective September 7, 1989.

Give Instruction 13.51.

Give Instructions 13.55 through 13.55E.

The Committee discussed the *mens rea* required for aggravated computer tampering and agreed that the defendant must know that he is accessing, and he must know that he is without or in excess of authority. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.53 Definition Of Computer Fraud

A person commits the offense of computer fraud when he knowingly

[1] [(accesses a computer or any part of a computer) (causes a computer or any part of a computer to be accessed) (accesses a program) (causes a program to be accessed) (accesses data) (causes data to be accessed)] and he does so [(for the purpose of [(devising) (executing)] any [(scheme to defraud) (artifice to defraud)]) (as part of a deception)].

[or]

[2] [(obtains use of a computer or any part of a computer) (damages a computer or any part of a computer) (destroys a computer or any part of a computer) (alters any data contained in a computer) (alters any program contained in a computer) (deletes any program contained in a computer) (deletes any data contained in a computer) (removes any data contained in a computer) (removes any program contained in a computer)] [(in connection with a scheme to defraud) (in connection with an artifice to defraud) (as part of a deception)].

[or]

[3] [(accesses a computer) (accesses any part of a computer) (accesses a program) (accesses data) (causes a computer to be accessed) (causes any part of a computer to be accessed) (causes a program to be accessed) (causes data to be accessed)] and obtains [(money) (control over money) (property) (services of another)] [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)][, and the value of the [(money) (property) (services)] is [(more than \$1,000) (\$50,000 or more)]]].

Committee Note

720 ILCS 5/16D-5 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-5 (1991)).

When paragraph [1] is used, give Instruction 13.54 (Issues in Computer Fraud by Access). When paragraph [2] is used, give Instruction 13.54A (Issues in Computer Fraud by Damage). When paragraph [3] is used, give Instruction 13.54B (Issues in Computer Fraud by Access for Money).

Give Instructions 13.55 through 13.55D, when appropriate.

The Committee, after a long discussion, decided that for the statute to apply, the purpose of any scheme addressed in this instruction must be to defraud, so although the statute reads “. . . in connection with any scheme . . .,” the Committee has drafted this instruction accordingly.

The Committee has included the value of the money, property, or services as an issue to be resolved by the jury because Section 16D-5(b)(3) sets forth different penalties depending on the value of the money, property, or services in question. Accordingly, the Committee has included the bracketed material at the end of paragraph [3] which should be given when the value of the property exceeds \$1,000.

If the value of the money, property, or services is an issue, then separate

definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the money, property, or services exceeds \$1,000, then this instruction would begin “A person commits the offense of computer fraud in excess of \$1,000 when he . . .”

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.54 Issues In Computer Fraud By Access

To sustain the charge of computer fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed data) (caused data to be accessed) (accessed a program) (caused a program to be accessed)]; and

Second Proposition: That the defendant acted [(for the purpose of [(devising) (executing)] [(a scheme to defraud) (an artifice to defraud)]) (as part of a deception)]; and

Third Proposition: That the defendant knew that he acted [(for the purpose of [(devising) (executing)] [(a scheme to defraud) (an artifice to defraud)]) (as part of a deception)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-5(a)(1) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-5(a)(1) (1991)).

Give Instruction 13.53, paragraph [1].

Give Instructions 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer fraud and agreed that the defendant must know that he is accessing, and he must know that he is acting for the purpose of defrauding or as part of a deception. See Chapter 720, Section 4-3(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.54A Issues In Computer Fraud By Damage

To sustain the charge of computer fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(obtained use of a computer or any part of a computer) (damaged a computer or any part of a computer) (destroyed a computer or any part of a computer) (altered any data contained in a computer) (altered any program contained in a computer) (deleted any data contained in a computer) (deleted any program contained in a computer) (removed any data contained in a computer) (removed any program contained in a computer)]; and

Second Proposition: That the defendant acted [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)]; and

Third Proposition: That the defendant knew he acted [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-5(a)(2) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-5(a)(2) (1991)).

Give Instruction 13.53, paragraph [2].

Give Instructions 13.55 through 13.55B.

The Committee discussed the *mens rea* required for computer fraud and agreed that the defendant must know that he is damaging, and he must know that he is acting for the purpose of defrauding or as a part of a deception.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.54B Issues In Computer Fraud By Access For Money

To sustain the charge of computer fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(accessed a computer or any part of a computer) (caused a computer or any part of a computer to be accessed) (accessed data) (caused data to be accessed) (accessed a program) (caused a program to be accessed)]; and

Second Proposition: That the defendant obtained [(money) (control over money) (property) (services of another)]; and

Third Proposition: That the defendant acted [(in connection with any scheme to defraud) (in connection with any artifice to defraud) (as part of a deception)]; and

Fourth Proposition: That the defendant knew that he acted [(in connection with any artifice to defraud) (as part of a deception)]; and

Fifth Proposition: That the value of the [(money) (property) (services)] was [(more than \$1,000) (\$50,000 or more)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16D-5(a)(3) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-5(a)(3) (1991)).

Give Instruction 13.53, paragraph [3].

Give Instructions 13.33, and 13.55 through 13.55D.

The Committee discussed the *mens rea* required for computer fraud and agreed that the defendant must know that he is accessing, and he must know that he is acting for the purpose of defrauding or as part of a deception.

The Committee has included the value of the money, property, or services as an issue to be resolved by the jury because Section 16D-5(b)(3) sets forth different penalties depending on the damage to the property in question. Accordingly, the Committee has included the Fifth Proposition which should be given when the value of the property exceeds \$1,000.

If the value of the money, property, or services is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the

greater offense from the lesser offense. For example, if the value of the money, property, or services exceeds \$1,000, then this instruction would begin “To sustain the charge of computer fraud in excess of \$1,000, the State must prove . . .”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.55 Definition Of Computer

The word "computer" means a device that accepts, processes, stores, retrieves, or outputs data, and includes, but is not limited to, auxiliary storage and telecommunications devices connected to computers.

Committee Note

720 ILCS 5/16D-2(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-2(a) (1991)).

13.55A Definition Of Computer Program Or Program

The term “computer program” or the word “program” means a series of coded instructions of statements in a form acceptable to a computer which causes the computer to process data and supply the results of the data processing.

Committee Note

720 ILCS 5/16D-2(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-2(b) (1991)).

13.55B Definition Of Data

The word "data" means a representation of information, knowledge, facts, concepts, or instructions, including program documentation, which is prepared in a formalized manner and is stored or processed in or transmitted by a computer. Data shall be considered property and may be in any form including, but not limited to, printouts, magnetic or optical storage media, punch cards, or data stored internally in the memory of the computer.

Committee Note

720 ILCS 5/16D-2(c) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-2(c) (1991)).

13.55C Definition Of Access

The word “access” means to use, instruct, communicate with, store data in, retrieve, or intercept data from, or otherwise utilize any services of a computer.

Committee Note

720 ILCS 5/16D-2(e) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-2(e) (1991)).

13.55D Definition Of Services

The word “services” includes, but is not limited to, computer time, data manipulation, or storage functions.

Committee Note

720 ILCS 5/16D-2(f) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-2(f) (1991)).

13.55E Definition Of Vital Services Or Operations

The phrase “vital services or operations” means those services or operations required to provide, operate, maintain, and repair network cabling, transmission, distribution, or computer facilities necessary to ensure or protect the public health, safety, or welfare. Public health, safety, or welfare include, but are not limited to, services provided by medical personnel or institutions, fire departments, emergency service agencies, national defense contractors, armed forces or militia personnel, private and public utility companies, or law enforcement agencies.

Committee Note

720 ILCS 5/16D-2(g) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 16D-2(g) (1991)).

13.56 Definition Of Insurance Fraud

A person commits the offense of insurance fraud [involving property valued at [(\$300 or less) (more than \$300 but not more than \$10,000) (more than \$10,000 but not more than 100,000) (\$100,000 or more)]] when he knowingly and by deception [(obtains control) (attempts to obtain control) (causes control to be obtained)] over the property of an insurance company by making a false claim on any insurance policy issued by an insurance company and intends to permanently deprive the insurance company of the use and benefit of that property, and the property is valued at [(\$300 or less) (more than \$300 but not more than \$10,000) (more than \$10,000 but not more than \$100,000) (\$100,000 or more)].

Committee Note

720 ILCS 5/46-1 (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as “Disclosing Location of Domestic Violence Victims.” P.A. 88-45 renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.57.

Give Instruction 13.56A, defining the word “value,” when the value of the defrauded property is an issue.

Ordinarily, the instruction sent to the jury need not contain the phrase “. . . but not more than \$10,000” or the phrase “. . . but not more than \$100,000,” unless the jury will receive instructions on a lesser-included insurance fraud offense when the range of the disputed value of the defrauded property extends across the incremental values listed in Section 46-1(b).

Use applicable bracketed material.

13.56A Definition Of Value—Insurance Fraud

Where the exact value of property [(obtained) (attempted to be obtained)] is either not asserted by the defendant or not specifically set by the terms of the insurance policy, then the value of the property shall be [both] [(the fair market replacement value of the property claimed to be lost) [and] (the reasonable costs of reimbursing a vendor or other claimant for services to be rendered)].

[The pertinent value of the defrauded property in insurance fraud is the value of the property [(obtained) (attempted to be obtained) (caused to be obtained)] from the insurance company, which will not necessarily be the same as the value of the property covered under the insurance policy.]

Committee Note

720 ILCS 5/46-1(c) (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993.

Give this instruction when the value of the defrauded property is an issue.

Use the final bracketed paragraph when the value of the property obtained, attempted to be obtained, or caused to be obtained from the insurance company differs from the value of the property covered under the insurance policy. For instance, if the defendant submits a \$300 dollar fraudulent claim to an insurance company under a policy covering a \$500,000 home, then the value of the insurance fraud is \$300, not \$500,000. In such a situation, use the final bracketed paragraph.

This definition directly applies only to the offense of insurance fraud. See 720 ILCS 5/46-1(c).

Use applicable bracketed material.

13.57 Issues In Insurance Fraud

To sustain the charge of insurance fraud [involving property valued at [(\$300 or less) (more than \$300 but not more than \$10,000) (more than \$10,000 but not more than \$100,000) (\$100,000 or more)], the State must prove the following propositions:

First Proposition: That the defendant knowingly made a claim to an insurance company under any insurance policy issued by an insurance company; and

Second Proposition: That the defendant knew that this claim was false; and

Third Proposition: That the defendant knowingly and by deception [(obtained control) (attempted to obtain control) (caused control to be obtained)] over the property of an insurance company by making the false claim; and

Fourth Proposition: That the defendant intended to permanently deprive the insurance company of the use and benefit of this property; and

Fifth Proposition: That this property of the insurance company was valued at [(\$300 or less) (more than \$300 but not more than \$10,000) (more than \$10,000 but not more than \$100,000) (\$100,000 or more)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/46-1 (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.56.

See the Committee Note to Instruction 13.56 regarding how to instruct the jury when the range of the disputed value of the defrauded property extends across the incremental values in Section 46-1(b).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.58 Definition Of Aggravated Insurance Fraud

A person commits the offense of aggravated insurance fraud when, within an 18 month period, he knowingly and by deception [(obtains control) (attempts to obtain control) (causes control to be obtained)] over the property of [(an insurance company) (insurance companies)] by making three or more false claims under any [(policy) (policies)] issued by an insurance company, and intends to permanently deprive the insurance [(company) (companies)] of the use and benefit of that property. [The three or more claims must also arise out of separate [(incidents) (transactions)].]

Committee Note

720 ILCS 5/46-2 (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as “Disclosing Location of Domestic Violence Victims.” P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.59.

Use applicable bracketed material.

13.59 Issues In Aggravated Insurance Fraud

To sustain the charge of aggravated insurance fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly made three or more claims to [(an insurance company) (insurance companies)] under any insurance [(policy) (policies)] issued by any insurance [(company) (companies)]; and

Second Proposition: That the defendant knew that all these claims were false; and

Third Proposition: That each claim allegedly arose out of a separate [(incident) (transaction)]; and

Fourth Proposition: That the defendant knowingly and by deception [(obtained control) (attempted to obtain control) (caused control to be obtained)] over the property of any insurance [(company) (companies)] three times or more by making these false claims; and

Fifth Proposition: That the defendant did so within a period of 18 months; and

Sixth Proposition: That the defendant at all three or more times intended to permanently deprive the insurance company of the use and benefit of the property.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/46-2 (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.58.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.60 Definition Of Insurance Fraud Conspiracy

A defendant commits the offense of insurance fraud conspiracy when, with the intent that the offense of [(insurance fraud) (aggravated insurance fraud)] be committed, he [(knowingly) (intentionally) (recklessly)] agrees with another to commit [(insurance fraud) (aggravated insurance fraud)], he or the other person has done an overt act or acts in furtherance of the agreement, and he is a part of a common scheme or plan to engage in the unlawful activity.

An agreement may be implied from the conduct of the parties even though they acted separately or by different means and did not come together into an express agreement.

To constitute the offense of insurance fraud conspiracy, it is not necessary that the conspirators succeeded in obtaining or exerting control over the insurance company's property.

[The person or persons with whom the defendant agrees to commit aggravated insurance fraud need not be the same for each instance of fraud. That is, the defendant may conspire with different co-conspirators in each of the three or more instances of fraud and still commit insurance fraud conspiracy.]

Committee Note

720 ILCS 5/46-3 (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.61.

Give either Instruction 13.56 (Definition of Insurance Fraud) or Instruction 13.58 (Definition of Aggravated Insurance Fraud), depending on which predicate offense the prosecution accuses defendant of committing.

Use the final bracketed paragraph when the defendant has allegedly agreed to commit aggravated insurance fraud with different co-conspirators on the three or more claimed occasions of fraud.

Because Section 46-3 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more

than one mental state, the same alternative mental states may be included in the instruction.

See Instruction 13.60A regarding purported defenses that the statute has excluded.

Use applicable bracketed material.

13.60A Precluded Defenses To Insurance Fraud Conspiracy

It is not a defense to insurance fraud conspiracy that the person or persons with whom the defendant has allegedly conspired [(have not been prosecuted or convicted) (have been convicted of other offenses) (were not amenable to justice) (have been acquitted) (lacked the capacity to commit an offense)].

Committee Note

720 ILCS 5/46-3(b) and (c) (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993.

Give this instruction when any of the purported defenses are at issue.

Use applicable bracketed material.

13.61 Issues In Insurance Fraud Conspiracy

To sustain the charge of insurance fraud conspiracy, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] agreed with another to commit [(insurance fraud) (aggravated insurance fraud)]; and

Second Proposition: That the defendant did so with the intent that the [(insurance fraud) (aggravated insurance fraud)] would be committed; and

Third Proposition: That [(the defendant) (a co-conspirator)] committed an overt act or acts in furtherance of committing [(insurance fraud) (aggravated insurance fraud)]; and

Fourth Proposition: That the defendant was a part of a common scheme or plan to engage in the unlawful activity.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/46-3 (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as “Disclosing Location of Domestic Violence Victims.” P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.60.

See Committee Note to Instruction 13.60 regarding the applicable mental states.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.62 Definition Of Organizing An Aggravated Insurance Fraud Conspiracy

A person commits the offense of organizing an insurance fraud conspiracy when, with the intent that aggravated insurance fraud be committed, he [(knowingly) (intentionally) (recklessly)] agrees with another to commit aggravated insurance fraud, occupies a position as [(an organizer) (a supervisor) (a financier) [or another position of management]], [(he) (another co-conspirator)] commits an overt act in furtherance of the agreement, and he is a part of a common scheme or plan to engage in the unlawful activity.

An agreement may be implied from the conduct of the parties even though they acted separately or by different means and did not come together into an express agreement.

To constitute the offense of insurance fraud conspiracy, it is not necessary that the conspirators succeed in committing the offense of [(insurance fraud) (aggravated insurance fraud)].

[The person or persons with whom the defendant agrees to commit aggravated insurance fraud need not be the same for each instance of fraud. That is, the defendant may conspire with different co-conspirators in each of the three or more instances of fraud and still commit insurance fraud conspiracy.]

Committee Note

720 ILCS 5/46-4 (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as “Disclosing Location of Domestic Violence Victims.” P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.63.

Give Instruction 13.58 (Definition of Aggravated Insurance Fraud).

Use the final bracketed paragraph when the defendant has allegedly agreed to commit aggravated insurance fraud with different co-conspirators on the three or more claimed occasions of fraud.

When using the phrase “or another position of management,” also use all the other alternatives in that bracket separated by commas to illustrate that phrase.

Because Section 46-4 does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 4-3(b) (1991)). The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill. 2d 15, 169 Ill. Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill. 2d 281, 158 Ill. Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill. 2d 397, 168 Ill. Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill. 2d 322, 60 Ill. Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular

offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

See Instruction 13.62A regarding purported defenses that the statute has excluded.

Use applicable bracketed material.

13.62A Precluded Defenses To Organizing An Aggravated Insurance Fraud Conspiracy

It is not a defense to organizing an insurance fraud conspiracy that the person or persons with whom the defendant has allegedly conspired [(have not been prosecuted or convicted) (have been convicted of other offenses) (were not amenable to justice) (have been acquitted) (lacked the capacity to commit an offense)].

Committee Note

720 ILCS 5/46-4(b) and (c) (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993.

Give this instruction when any of these purported defenses are at issue.

Use applicable bracketed material.

13.63 Issues In Organizing An Aggravated Insurance Fraud Conspiracy

To sustain the charge of organizing an insurance fraud conspiracy, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] agreed with another to commit aggravated insurance fraud; and

Second Proposition: That the defendant did so with the intent that the aggravated insurance fraud be committed; and

Third Proposition: That [(the defendant) (another co-conspirator)] committed an overt act in furtherance of the agreement; and

Fourth Proposition: That the defendant held a position as [(an organizer) (a supervisor) (a financier) [or another position of management]] with respect to the other person[s] within the conspiracy; and

Fifth Proposition: That the defendant was a part of a common scheme or plan to engage in the unlawful activity.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/46-4 (West 1992), added by P.A. 87-1134, effective January 1, 1993, and renumbered by P.A. 88-45, effective July 6, 1993. P.A. 87-1134 originally added insurance fraud crimes as Article 45 of the Criminal Code, even though the legislature had already defined Article 45 as "Disclosing Location of Domestic Violence Victims." P.A. 88-45 thus renumbered the insurance fraud crimes to Article 46 without making any substantive changes.

Give Instruction 13.62 and see the Committee Note to that instruction.

When using the phrase "or another position of management," also use all the other alternatives in that bracket separated by commas to illustrate that phrase.

See the Committee Note to Instruction 13.62 regarding the applicable mental states.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.64 Definition Of Home Repair Fraud—Agreement Or Contract

A person commits the offense of home repair fraud when he knowingly enters into [(an agreement) (a contract)] [for an amount exceeding \$1000] with a person for home repair, and he knowingly

[1] misrepresents a material fact relating to [(the terms of the [(agreement) (contract)]) (the preexisting or existing condition of any portion of the property involved)].

[or]

[2] [(creates) (confirms)] another's impression which is false and which he does not believe to be true.

[or]

[3] promises performance which he does not intend to perform or knows will not be performed.

[or]

[4] uses or employs any [(deception) (false pretense) (false promises)] in order to induce, encourage, or solicit such person to enter into any [(agreement) (contract)].

[In determining the amount of the [(agreement) (contract)], add the amounts of two or more [(agreements) (contracts)] together if they are entered into with the same person by the defendant as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[(An agreement) (A contract)] may be written or oral.]

Committee Note

815 ILCS 515/3(a)(1), (a)(2), and 4(a) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, §§ 1603(a)(1), (a)(2), and 1604(a) (1991)).

Give Instruction 13.65.

When applicable, give Instruction 13.64A, defining the term “home repair.”

Section 4(a) enhances the penalty for the violation of Section 3(a)(1) or 3(a)(2) from a Class A misdemeanor to a Class 4 felony when the contract or agreement exceeds \$1,000. Thus, the Committee has included a bracketed option in the opening paragraph (“[for an amount exceeding \$1,000]”) to be given when the amount of the contract or agreement is an issue. When the amount of the contract or agreement is an issue, it should be resolved by the jury. See *People v. Mays*, 80 Ill. App. 3d 340, 35 Ill. Dec. 652, 399 N.E.2d 718 (3d Dist. 1980).

Section 4(a) also enhances the penalty if the defendant's conviction is a subsequent offense. However, 720 ILCS 5/111-3(c) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 111-3(c) (1991)), added by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues.

When more than one contract or agreement provides the basis for the amount at issue to exceed \$1,000, give the bracketed paragraph following the four bracketed alternatives.

When an issue arises whether a contract or agreement must be written, give the bracketed last paragraph.

If the amount of the agreement or contract is an issue, then separate definitional instructions, issue instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the contract exceeds \$1,000, then this instruction would begin "A person commits the offense of home repair fraud in excess of \$1,000 when he"

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.64A Definition Of Home Repair

The term “home repair” means the fixing, replacing, altering, converting, modernizing, improving of, or the making of an addition to any real property primarily designed or used as a residence.

[Home repair includes the [(construction) (installation) (replacement) (improvement)] of [(driveways) (swimming pools) (porches) (kitchens) (chimneys) (chimney liners) (garages) (fences) (fallout shelters) (central air conditioning) (central heating) (boilers) (furnaces) (hot water heaters) (electrical wiring) (sewers) (plumbing fixtures) (storm doors) (storm windows) (awnings) [and other improvements to structures within the residence or upon the land adjacent thereto]].]

Committee Note

815 ILCS 515/2(a) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, § 1602(a) (1991)).

See Section 2(b) for services excluded from the definition of home repair.

Use applicable bracketed material.

13.64B Definition Of Residence

The word “residence” means a single or multiple family dwelling, including but not limited to [(a single family home) (an apartment building) (a condominium) (a duplex) (a townhouse)] which is used or intended to be used by its occupants as their dwelling place.

Committee Note

815 ILCS 515/2(c) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, § 1602(c) (1991)).

Use applicable bracketed material.

13.64C Deleted

13.65 Issues In Home Repair Fraud—Agreement Or Contract

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered into [(an agreement) (a contract)] with a person for home repair; and

[1] *Second Proposition:* That the defendant knowingly misrepresented a material fact relating to [(the terms of the [(agreement) (contract)]) (the preexisting or existing condition of any portion of the property involved)][(.) (; and)]

[or]

[2] *Second Proposition:* That the defendant knowingly [(created) (confirmed)] another's impression which was false and which he did not believe to be true[(.) (; and)]

[or]

[3] *Second Proposition:* That the defendant knowingly promised performance which he did not intend to perform or knew would not be performed[(.) (; and)]

[or]

[4] *Second Proposition:* That the defendant knowingly used or employed any [(deception) (false pretense) (false promises)] in order to induce, encourage, or solicit such person to enter into any [(agreement) (contract)][(.) (; and)]

[Third Proposition: That the amount of the [(agreement[s]) (contract[s])] exceeded \$1,000[(.) (; and)]]

[Fourth Proposition: That the defendant entered into such [(agreement[s]) (contract[s])] as part of or in furtherance of a common fraudulent scheme, design, or intention.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/3(a)(1), (a)(2), and 4(a) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, §§ 1603(a)(1), (a)(2), and 1604(a) (1991)).

Give Instruction 13.64.

Give the Third Proposition only when the issue arises whether the amount of the contract (or contracts) or agreement (or agreements) exceeded \$1,000. See the Committee Note for Instruction 13.64.

Give the Fourth Proposition only when multiple contracts or agreements are in

issue. See the Committee Note for Instruction 13.64. The Third Proposition must be given when the Fourth Proposition is given.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.66 Definition Of Home Repair Fraud—Unconscionable Agreement Or Contract

A person commits the offense of home repair fraud when he knowingly enters into an unconscionable [(agreement) (contract)] with a person for home repair, requiring payment to the contractor [(of at least \$4,000) (of at least \$4,000 but not more than \$10,000) (more than \$10,000)].

[[An agreement) (A contract)] may be written or oral.]

Committee Note

815 ILCS 515/3(a)(3) and 4(b) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, §§ 1603(a)(3) and 1604(b) (1991)).

Give Instructions 13.66A and 13.67.

When applicable, give Instruction 13.64A, defining the term “home repair.”

Section 4(b) enhances the penalty for the violation of Section 3(a)(3) from a Class 4 to a Class 3 felony when the contract or agreement exceeds \$10,000. Thus, the Committee has included a bracketed alternative covering the amount of the contract or agreement. Use the second alternative (“at least \$4,000 but not more than \$10,000”) only when the amount of the contract or agreement is an issue. When the amount of the contract or agreement is an issue, it should be resolved by the jury. See *People v. Mays*, 80 Ill. App. 3d 340, 35 Ill. Dec. 652, 399 N.E.2d 718 (3d Dist. 1980).

When an issue arises whether a contract or agreement must be written, give the bracketed last paragraph.

If the amount of the agreement or contract is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the contract exceeds \$10,000, then this instruction would begin “A person commits the offense of home repair fraud in excess of \$10,000 when he”

Use applicable bracketed material.

13.66A Definition Of Unconscionable

A contract is unconscionable when an unreasonable difference exists between the value of the services, materials, and work to be performed, and the amount charged for those services, materials, and work.

Committee Note

815 ILCS 515/3(a)(3) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, § 1603(a)(3) (1991)).

Section 3(a)(3) discusses when *prima facie* evidence exists that a contract or agreement is unconscionable. However, *People v. Gray*, 99 Ill. App. 3d 851, 55 Ill. Dec. 315, 426 N.E.2d 290 (5th Dist. 1981), holds that the jury should not be instructed in the language of the statute about the *prima facie* effect of certain evidence. According to Gray, the legislature's use of the term "*prima facie*" is a direction to the court on when to submit evidence to the jury and should not be translated into a jury instruction. Also, Gray states that this is a legal term which a jury might read as creating a type of presumption that is constitutionally impermissible in criminal cases.

13.67 Issues In Home Repair Fraud—Unconscionable Agreement Or Contract

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered into [(an agreement) (a contract)] with a person for home repair; and

Second Proposition: That the [(agreement) (contract)] required payment to the contractor [(of at least \$4,000) (of at least \$4,000 but not more than \$10,000) (more than \$10,000)]; and

Third Proposition: That the defendant knowingly entered into an unconscionable [(agreement) (contract)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/3(a)(3) and 4(b) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, §§ 1603(a)(3) and 1604(b) (1991)).

Give Instruction 13.66.

See the Committee Note to Instruction 13.66 regarding the bracketed alternative covering the amount of the contract or agreement in the Second Proposition.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.68 Definition Of Home Repair Fraud—Assumed Business Name Act

A person commits the offense of home repair fraud when he knowingly enters into [(an agreement) (a contract)] [for an amount more than \$1,000] with a person for home repair, and knowingly _____ and [(misrepresents) (conceals)] [(his real name) (the name of his business) (his business address)].

[In determining the amount of the [(agreement) (contract)], the amounts of two or more [(agreements) (contracts)] should be added together if they are entered into with the same victim by the defendant as part of or in furtherance of a common fraudulent scheme, design, or intention.]

[[(An agreement) (A contract)] may be written or oral.]

Committee Note

815 ILCS 515/3(a)(4) and 4(c) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, §§ 1603(a)(4) and 1604(c) (1991)).

Give Instruction 13.69.

When applicable, give Instruction 13.64, defining the term “home repair.”

This instruction applies when the defendant fails to comply with the provisions of the Assumed Business Name Act, 805 ILCS 405/4 (formerly Ill. Rev. Stat. ch. 96, § 4 (1991)). Insert in the blank the alleged violation of the Assumed Business Name Act.

Section 4(c) enhances the penalty for the violation of Section 3(a)(4) from a Class A misdemeanor to a Class 4 felony when the contract or agreement exceeds \$1,000. Thus, the Committee has included a bracketed option in the opening paragraph (“[for an amount exceeding \$1,000]”) to be given when the amount of the contract or agreement is an issue. When the amount of the contract or agreement is an issue, it should be resolved by the jury. See *People v. Mays*, 80 Ill. App. 3d 340, 35 Ill. Dec. 652, 399 N.E.2d 718 (3d Dist. 1980).

Section 4(c) also enhances the penalty if the defendant’s conviction is a subsequent offense. However, 720 ILCS 5/111-3(c) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 111-3(c) (1991)), added by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues.

When more than one contract or agreement provides the basis for the amount at issue to exceed \$1,000, give the bracketed second paragraph.

When an issue arises whether a contract or agreement must be written, give the bracketed last paragraph.

If the amount of the agreement or contract is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater

offense from the lesser offense. For example, if the value of the contract exceeds \$1,000, then this instruction would begin "A person commits the offense of home repair fraud in excess of \$1,000 when he . . ."

Use applicable bracketed material.

13.69 Issues In Home Repair Fraud—Assumed Business Name Act

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered into [(an agreement) (a contract)] with a person for home repair; and

Second Proposition: That the defendant _____; and

Third Proposition: That the defendant [(misrepresented) (concealed)] [(his real name) (the name of his business) (his business address)][(.) (; and)]

Fourth Proposition: That the amount of the [(agreement[s]) (contract[s])] was more than \$1,000[(.) (; and)]

Fifth Proposition: That the defendant entered into such [(agreement[s]) (contract[s])] as part of or in furtherance of a common fraudulent scheme, design, or intention.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/3(a)(4) and 4(c) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, §§ 1603(a)(4) and 1604(c) (1991)).

Give Instruction 13.68.

Insert in the blank the violation of the Assumed Business Name Act.

Give the fourth proposition only when the issue arises whether the amount of the contract (or contracts) or agreement (or agreements) exceeded \$1,000. See the Committee Note for Instruction 13.68.

Give the fifth proposition only when multiple contracts or agreements are in issue. See the Committee Note for Instruction 13.68. The fourth proposition must be given when the fifth proposition is given.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.70 Definition Of Home Repair Fraud—Property Damage Or Noncontracting Misrepresentation

A person commits the offense of home repair fraud when he knowingly

[1] damages the property of a person with the intent to enter into [(an agreement) (a contract)] for home repair.

[or]

[2] misrepresents himself [or another] to be an [(employee) (agent)] of [(any unit of [(federal) (State) (municipal)] government) (any governmental unit) (any public utility)] with the intent to cause a person to enter into, with himself or another, any [(agreement) (contract)] for home repair.

Committee Note

815 ILCS 515/3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, § 1603(b) (1991)).

Give Instruction 13.71.

When applicable, give Instruction 13.64A, defining the term “home repair.”

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.71 Issues In Home Repair Fraud—Property Damage Or Noncontracting Misrepresentation

To sustain the charge of home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant knowingly damaged the property of a person; and

Second Proposition: That the defendant did so with the intent to enter into [(an agreement) (a contract)] for home repair.

[or]

First Proposition: That the defendant misrepresented himself [or another] to be an [(employee) (agent)] of [(any unit of [(federal) (State) (municipal)] government) (any governmental unit) (any public utility)]; and

Second Proposition: That the defendant did so with the intent to cause a person to enter into, with the defendant or another, any [(agreement) (contract)] for home repair.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/3(b) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, § 1603(b) (1991)).

Give Instruction 13.70.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.72 Definition Of Aggravated Home Repair Fraud

A person commits the offense of aggravated home repair fraud when he commits the offense of home repair fraud against [(a person 60 years of age or older) (a disabled person)].

Committee Note

815 ILCS 515/5(a) (West 1992) (formerly Ill. Rev. Stat. 1211/2, § 1605(a) (1991)), as amended by P.A. 87-490, effective January 1, 1992.

Give Instruction 13.73.

Give the definitional instruction for the underlying home repair fraud that corresponds to the offense in the charge—Instruction 13.64, 13.66, 13.68, or 13.70. Also, see the Committee Note to that definitional instruction.

When applicable, give Instruction 13.35B, defining the term “disabled person.”

Sections 5(a), 5(b), and 5(c) enhance the penalty when the contracts or agreements involved exceed a specified dollar amount. See 815 ILCS 515/5(a), 5(b), and 5(c) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, §§ 1605(a), 1605(b), and 1605(c) (1991)). Thus, the definitional instruction for the underlying home repair fraud offense should be modified as necessary to reflect the amount that is at issue. See the Committee Notes to Instruction 13.64, 13.66, or 13.68 for guidance.

Sections 5(a) and 5(c) also enhance the penalty if the defendant’s conviction is a subsequent offense. However, 720 ILCS 5/111-3(c) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 111-3(c) (1991)), added by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the classification of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues.

Use applicable bracketed material.

13.73 Issues In Aggravated Home Repair Fraud

To sustain the charge of aggravated home repair fraud, the State must prove the following propositions:

First Proposition: That the defendant committed the offense of home repair fraud against _____; and

Second Proposition: That _____ was [(60 years of age or older) (a disabled person)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

815 ILCS 515/5(a) (West 1992) (formerly Ill. Rev. Stat. ch. 1211/2, § 1605(a) (1991)), as amended by P.A. 87-490, effective January 1, 1992.

Give Instruction 13.72.

Give the issues instruction for the underlying home repair fraud that corresponds to the definitional instruction given for the underlying home repair offense in the charge—Instruction 13.65, 13.67, 13.69, or 13.71. See the Committee Note to that issues instruction. Also, see the Committee Note to Instruction 13.72.

When the amount of the contracts or agreements is at issue, modify the issues instruction for the underlying home repair fraud offense to correspond to the definitional instruction for the underlying home repair fraud offense. See the Committee Notes to Instruction 13.65, 13.67, or 13.69 for guidance.

Insert in the blanks the name of the alleged victim of home repair fraud.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

13.74 Definition Of Theft By Control Of Property Represented As Stolen

A person commits the offense of theft when he knowingly [(obtains) (exerts)] control over property in the custody of a law enforcement agency which is explicitly represented to him by [(a law enforcement officer) (an individual acting in behalf of a law enforcement agency)] as being stolen, and he

[1] intends to deprive the owner permanently of the use or benefit of the property.

[or]

[2] knowingly [(uses) (conceals) (abandons)] the property in such manner as to deprive the owner permanently of its use or benefit.

[or]

[3] [(uses) (conceals) (abandons)] the property knowing that the owner will thereby probably be permanently deprived of its use or benefit.

Committee Note

720 ILCS 5/16-1(a)(5) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 16-1 (1991)), amended by P.A. 85-1296, effective January 1, 1989; and P.A. 89-377, effective August 18, 1995.

Give Instruction 13.75.

Theft by obtaining or exerting control over property represented as stolen can be a felony if the value of the property exceeds \$300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding \$300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the \$300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin "A person commits the offense of theft of property in excess of \$300 when he . . ."

Select the bracketed alternatives so that the instruction is no broader than the charging instrument. If a charging instrument charges "obtains" rather than "exerts," then only "obtains" should be utilized. When the pleading is stated in the alternative (e.g., "obtains or exerts"), the instruction should be in the alternative unless the evidence fails to justify a particular alternative. The Committee takes no position on whether alternative pleading is proper under 720 ILCS 5/16-1.

Other definitions may be appropriate. See Instructions 13.33 through 13.33D.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel

and should not be included in the instruction submitted to the jury.

13.75 Issues In Theft By Control Of Property Represented As Stolen

To sustain the charge of theft, the State must prove the following propositions:

First Proposition: That a law enforcement agency had custody of the property in question; and

Second Proposition: That the defendant knowingly [(obtained) (exerted)] control over the property in question; and

Third Proposition: That [(a law enforcement officer) (an individual acting in behalf of a law enforcement agency)] explicitly represented to the defendant that the property in question was stolen; and

Fourth Proposition: That the defendant intended to deprive the owner permanently of the use or benefit of the property in question.

[or]

Fourth Proposition: That the defendant knowingly [(used) (concealed) (abandoned)] the property in question in such manner as to deprive the owner permanently of the use or benefit.

[or]

Fourth Proposition: That the defendant [(used) (concealed) (abandoned)] the property in question knowing that the owner will thereby probably be deprived permanently of its use or benefit.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-1(a)(5) (West 1994) (formerly Ill. Rev. Stat. ch. 38, § 16-1 (1991)), amended by P.A. 85-1296, effective January 1, 1989; and P.A. 89-377, effective August 18, 1995.

Give Instruction 13.74.

Theft by obtaining or exerting control over property represented as stolen can be a felony if the value of the property exceeds \$300 or if the defendant has previously been convicted of theft. Effective January 1, 1988, Section 16-1 was amended to provide that when a charge of theft of property exceeding \$300 in value is brought, the value of the property involved is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the \$300. See P.A. 85-691, P.A. 85-1030, and P.A. 85-1440. Therefore, if the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these

circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin "To sustain the charge of theft of property in excess of \$300, the State must prove . . ."

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

13.77 Definition Of Identity Theft

A person commits the offense of identity theft when he knowingly

[1] uses any personal identifying information or personal identification document of another person to fraudulently obtain [(credit) (money) (goods) (services) (property)] [and the value of the [(credit) (money) (goods) (services) (property))] [(does not exceed \$300 in value) (exceeds _____ in value but does not exceed _____ in value) (exceeds \$100,000 in value)] [(.) (; and)]

[or]

[2] uses any personal identification information or personal identification document of another with intent to commit any felony[(.) (; and)]

[or]

[3] [(obtains) (records) (possesses) (sells) (transfers) (purchases) (manufactures)] any personal identification information or personal identification document of another with intent to commit any felony[(.) (; and)]

[or]

[4] [(uses) (obtains) (records) (possesses) (sells) (transfers) (purchases) (manufactures)] any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority[(.) (; and)]

[or]

[5] [(uses) (transfers) (possesses)] document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony[(.) (; and)]

[or]

[6] uses any personal identification information or personal identification document of another to portray [(himself) (herself)] as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person[(.) (; and)]

[or]

[7] uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of [(the actions taken) (communications made or received) (activities or transactions)] of that person, without the prior express permission of that person[(.) (; and)]

[or]

[8] [(uses) (possesses) (transfers)] a radio frequency identification device capable of obtaining or processing personal identifying information from a radio frequency identification (RFID) tag or transponder with knowledge that the device will be used by the person or another to commit a felony violation of State law or any violation of this Article[(.) (; and)]

[or]

[9] in the course of applying for a building permit with a unit of local government, provides the license number of a [(roofing) (fire sprinkler)] contractor whom he or she does not intend to have perform the work on the [(roofing) (fire sprinkler)] portion of the project[(.) (; and)]

[the victim of the identity theft is an active duty member of the [(Armed Services or Reserve Forces of the United States) (Illinois National Guard)] serving in a foreign country.]

Committee Note

720 ILCS 5/16-30 (West 2021), effective January 1, 2012, as amended by P.A. 97-1109, effective January 1, 2013.

Give Instruction 13.78.

When the affirmative defense applicable to paragraph [9] is at issue, give Instruction 13.79, “affirmative defense to identity theft.”

Give the bracketed last two lines of the instruction only when there is evidence that the victim was a member of the Armed Services or Reserve Forces of the United States or Illinois National Guard serving in a foreign country at the time of the offense.

When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. 720 ILCS 5/16-30(d).

The bracketed language in [1] regarding the upper limit in value is used in cases where disputes about the value of the credit, money, goods, services or property fraudulently obtained support lesser included offenses and a lesser included offense instruction based upon value is given. Only when a lesser included offense instruction is given are the statutory upper limits provided in 720 ILCS 5/16-30(e)(1)(A) an issue in the case.

In *People v. Sanchez*, 2013 IL App (2d) 120445, 992 N.E.2d 148, the appellate court interpreted the phrase “knowingly used personal identifying information of another” to mean that the State must prove that the defendant knew that the personal identifying information belonged to another person. *See also People v. Hernandez*, 2012 IL App (1st) 092841, 967 N.E.2d 910 (the word “knowingly” as used in the identity theft statute applies to the “of another person” element of the offense).

In *People v. Bensen*, 2017 IL App (2d) 150085, 81 N.E.3d 613, the court construed the phrase “of another person” to mean that the personal identifying information on a credit card must identify someone other than the defendant as the cardholder. The Committee believes this applies to the offense as set forth in paragraphs [1], [2], [6] and [7].

Use applicable bracketed paragraphs and material.

The bracketed numbers are present solely for the guidance of court and counsel

and should not be included in the instruction submitted to the jury.

13.77A Definition of Aggravated Identity Theft

A person commits the offense of aggravated identity theft when he knowingly

[1] uses any personal identifying information or personal identification document of another person to fraudulently obtain [(credit) (money) (goods) (services) (property)] and the value of the [(credit) (money) (goods) (services) (property)] [(does not exceed \$300 in value) (exceeds _____ in value but does not exceed _____ in value) (exceeds \$100,000 in value)]; and

[or]

[2] uses any personal identification information or personal identification document of another with intent to commit any felony; and

[or]

[3] [(obtains) (records) (possesses) (sells) (transfers) (purchases) (manufactures)] any personal identification information or personal identification document of another with intent to commit any felony; and

[or]

[4] [(uses) (obtains) (records) (possesses) (sells) (transfers) (purchases) (manufactures)] any personal identification information or personal identification document of another knowing that such personal identification information or personal identification documents were stolen or produced without lawful authority; and

[or]

[5] [(uses) (transfers) (possesses)] document-making implements to produce false identification or false documents with knowledge that they will be used by the person or another to commit any felony; and

[or]

[6] uses any personal identification information or personal identification document of another to portray [(himself) (herself)] as that person, or otherwise, for the purpose of gaining access to any personal identification information or personal identification document of that person, without the prior express permission of that person; and

[or]

[7] uses any personal identification information or personal identification document of another for the purpose of gaining access to any record of [(the actions taken) (communications made or received) (activities or transactions)] of that person, without the prior express permission of that person; and

[or]

[8] [(uses) (possesses) (transfers)] a radio frequency identification device capable of obtaining or processing personal identifying information from a radio frequency identification (RFID) tag or transponder with knowledge that the device will be used by the person or another to commit a felony violation of State law or any violation of this Article; and

[or]

[9] in the course of applying for a building permit with a unit of local government, provides the license number of a [(roofing) (fire sprinkler)] contractor whom he or she does not intend to have perform the work on the [(roofing) (fire sprinkler)] portion of the project; and

[A] the victim is a person 60 years of age or older.

[or]

[B] the victim is a person with a disability.

[or]

[C] the action is in furtherance of the activities of an organized gang.

Committee Note

720 ILCS 5/16-30(b) (West 2021), effective January 1, 2012, as amended by P.A. 97-1109, effective January 1, 2013.

Give Instruction 13.78A.

When the affirmative defense applicable to paragraph [9] is at issue, give Instruction 13.79, “affirmative defense to identity theft.”

When paragraph [A] is used, a defense to aggravated identity theft does not exist merely because the accused reasonably believed the victim to be a person less than 60 years of age. 720 ILCS 5/16-30(b) (West 2013). *See also People v. Harris*, 2017 IL App (1st) 140777 (where statute does not assign mental state to aggravating factors, then State not required to prove defendant’s knowledge of aggravating factor).

When paragraph [C] is used, give Instruction 4.20, defining the phrase “organized gang.”

When a charge of aggravated identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. 720 ILCS 5/16-30(d).

The bracketed language in [1] regarding the upper limit in value is used in cases where disputes about the value of the credit, money, goods, services or property fraudulently obtained support lesser included offenses and a lesser included offense instruction based upon value is given. Only when a lesser included offense instruction is given are the statutory upper limits provided in 720 ILCS 5/16-30(e)(1)(A) an issue in the case.

In *People v. Sanchez*, 2013 IL App (2d) 120445, 992 N.E.2d 148, the appellate court interpreted the phrase “knowingly used personal identifying information of another” to mean that the State must prove that the defendant knew that the personal identifying information belonged to another person. *See also People v. Hernandez*, 2012 IL App (1st) 092841, 967 N.E.2d 910 (the word “knowingly” as used in the identity theft statute applies to the “of another person” element of the offense).

In *People v. Bensen*, 2017 IL App (2d) 150085, 81 N.E.3d 613, the court construed the phrase “of another person” to mean that the personal identifying information on a credit card must identify someone other than the defendant as the cardholder. The Committee believes this applies to the offense as set forth in paragraphs [1], [2], [6] and [7].

Use both applicable bracketed numbered paragraphs [1] through [9] and the applicable bracketed lettered paragraphs [A] through [C].

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

13.78 Issues In Identity Theft

To sustain the charge of identity theft, the State must prove the following proposition[s]:

[1] [*First Proposition:*] That the defendant knowingly used any [(personal identifying information) (personal identification document)] of another person to fraudulently obtain [(credit) (money) (goods) (services) (property)][(.) (; and)]

Second Proposition: That the value of the [(credit) (money) (goods) (services) (property)] [(did not exceed \$300 in value) (exceeded _____ in value but did not exceed _____ in value) (exceeded \$100,000 in value)][(.) (; and)]

[or]

[2] [*First Proposition:*] That the defendant knowingly used [(personal identification) (personal identification document)] of another with the intent to commit the offense of _____ [(.) (; and)]

[or]

[3] [*First Proposition:*] That the defendant knowingly [(obtained) (recorded) (possessed) (sold) (transferred) (purchased) (manufactured)] any [(personal identification information) (personal identification document)] of another with the intent to commit the offense of _____ [(.) (; and)]

[or]

[4] [*First Proposition:*] That the defendant knowingly [(used) (obtained) (recorded) (possessed) (sold) (transferred) (purchased) (manufactured)] any [(personal identification information) (personal identification document)] of another knowing that such [(personal identification information) (personal identification document)] was [(stolen) (produced without lawful authority)][(.) (; and)]

[or]

[5] [*First Proposition:*] That the defendant knowingly [(used) (transferred) (possessed)] document-making implements to produce [(false identification) (false documents)] with knowledge that they will be used by the person or another to commit _____ [(.) (; and)]

[or]

[6] [*First Proposition:*] That the defendant knowingly used any [(personal identification information) (personal identification document)] of another to portray [(himself) (herself)] as that person, or otherwise, for the purpose of gaining access to any [(personal identification information) (personal identification document)] of that person, without the prior express permission of that person[(.) (; and)]

[or]

[7] [*First Proposition:*] That the defendant knowingly used any [(personal identification information) (personal identification document)] of another for the purpose of gaining access to [(any record of the actions taken) (communications made or received)]

(activities or transactions of that person)], without the prior express permission of that person[(.) (; and)]

[or]

[8] [*First Proposition:*] That the defendant knowingly [(used) (possessed) (transferred)] a radio frequency identification device capable of obtaining or processing personal identifying information from a radio frequency identification (RFID) tag or transponder with knowledge that the device will be used by the defendant or another to commit _____[(.) (; and)]

[or]

[9] [*First Proposition:*] That the defendant, in the course of applying for a building permit with a unit of local government, knowingly provides the license number of a [(roofing) (fire sprinkler)] contractor whom he does not intend to have perform the work on the [(roofing) (fire sprinkler)] portion of the project[(.) (; and)]

[(*Second*) (*Third*) *Proposition:*] That the victim of the identity theft was an active duty member of the [(Armed Services or Reserve Forces of the United States) (Illinois National Guard)] serving in a foreign country.]

If you find from your consideration of all the evidence that [(this proposition) (each one of these propositions)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this proposition) (any one of these propositions)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-30 (West 2021), effective January 1, 2012, as amended by P.A. 97-1109, effective January 1, 2013.

Give Instruction 13.77.

When the affirmative defense applicable to paragraph [9] is at issue, give Instruction 13.79, “affirmative defense to identity theft.”

Insert in the blanks in the first Proposition the name of the felony.

Give the additional Proposition only when there is evidence that the victim was a member of the Armed Services or Reserve Forces of the United States or Illinois National Guard serving in a foreign country at the time of the offense.

When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. 720 ILCS 5/16-30(d).

The bracketed language regarding the upper limit in value is used in cases where disputes about the value of the credit, money, goods, services or property fraudulently obtained support lesser included offenses and a lesser included offense

instruction based upon value is given. Only when a lesser included offense instruction is given are the statutory upper limits provided in 720 ILCS 5/16-30(e)(1)(A) an issue in the case.

In *People v. Sanchez*, 2013 IL App (2d) 120445, 992 N.E.2d 148, the appellate court interpreted the phrase “knowingly used personal identifying information of another” to mean that the State must prove that the defendant knew that the personal identifying information belonged to another person. *See also People v. Hernandez*, 2012 IL App (1st) 092841, 967 N.E.2d 910 (the word “knowingly” as used in the identity theft statute applies to the “of another person” element of the offense).

In *People v. Bensen*, 2017 IL App (2d) 150085, 81 N.E.3d 613, the court construed the phrase “of another person” to mean that the personal identifying information on a credit card must identify someone other than the defendant as the cardholder. The Committee believes this applies to the offense as set forth in paragraphs [1], [2], [6] and [7].

Use applicable bracketed paragraphs and material.

The bracketed numbers [1] through [9] correspond to the alternatives of the same number in Instruction 13.77. Select the corresponding alternatives.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

13.78A Issues in Aggravated Identity Theft

To sustain the charge of aggravated identity theft, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly used any [(personal identifying information) (personal identification document)] of another person to fraudulently obtain [(credit) (money) (goods) (services) (property)]; and

[*Second Proposition:* That the value of the [(credit) (money) (goods) (services) (property)] [(did not exceed \$300 in value) (exceeded _____ in value but did not exceed _____ in value) (exceeded \$100,000 in value)]; and]

[or]

[2] *First Proposition:* That the defendant knowingly used [(personal identification) (personal identification document)] of another with the intent to commit the offense of _____; and

[or]

[3] *First Proposition:* That the defendant knowingly [(obtained) (recorded) (possessed) (sold) (transferred) (purchased) (manufactured)] any [(personal identification information) (personal identification document)] of another with the intent to commit the offense of _____; and

[or]

[4] *First Proposition:* That the defendant knowingly [(used) (obtained) (recorded) (possessed) (sold) (transferred) (purchased) (manufactured)] any [(personal identification information) (personal identification document)] of another knowing that such [(personal identification information) (personal identification document)] was [(stolen) (produced without lawful authority)]; and

[or]

[5] *First Proposition:* That the defendant knowingly [(used) (transferred) (possessed)] document-making implements to produce [(false identification) (false documents)] with knowledge that they will be used by the person or another to commit _____; and

[or]

[6] *First Proposition:* That the defendant knowingly used any [(personal identification information) (personal identification document)] of another to portray [(himself) (herself)] as that person, or otherwise, for the purpose of gaining access to any [(personal identification information) (personal identification document)] of that person, without the prior express permission of that person; and

[or]

[7] *First Proposition:* That the defendant knowingly used any [(personal identification information) (personal identification document)] of another for the purpose of gaining access to [(any record of the actions taken) (communications made or received)]

(activities or transactions of that person)], without the prior express permission of that person; and

[or]

[8] *First Proposition*: That the defendant knowingly [(used) (possessed) (transferred)] a radio frequency identification device capable of obtaining or processing personal identifying information from a radio frequency identification (RFID) tag or transponder with knowledge that the device will be used by the defendant or another to commit _____; and

[or]

[9] *First Proposition*: That the defendant, in the course of applying for a building permit with a unit of local government, knowingly provides the license number of a [(roofing) (fire sprinkler)] contractor whom he does not intend to have perform the work on the [(roofing) (fire sprinkler)] portion of the project; and

[A] [(*Second*) (*Third*)] *Proposition*: That the victim is a person 60 years of age or older.

[or]

[B] [(*Second*) (*Third*)] *Proposition*: That the victim is a person with a disability.

[or]

[C] [(*Second*) (*Third*)] *Proposition*: That the action is in furtherance of the activities of an organized gang.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/16-30(b) (West 2021), effective January 1, 2012, as amended P.A. 97-1109, effective January 1, 2013.

Give Instruction 13.77A.

When the affirmative defense applicable to paragraph [9] is at issue, give Instruction 13.79, “affirmative defense to identity theft.”

When paragraph [C] is used, give Instruction 4.20, defining the phrase “organized gang.”

When a charge of identity theft of credit, money, goods, services, or other property exceeding a specified value is brought, the value of the credit, money, goods, services, or other property is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. 720 ILCS 5/16-30(d).

The bracketed language regarding the upper limit in value is used in cases where disputes about the value of the credit, money, goods, services or property fraudulently obtained support lesser included offenses and a lesser included offense instruction based upon value is given. Only when a lesser included offense instruction is given are the statutory upper limits provided in 720 ILCS 5/16-30(e)(1)(A) an issue in the case.

In *People v. Sanchez*, 2013 IL App (2d) 120445, 992 N.E.2d 148, the appellate court interpreted the phrase “knowingly used personal identifying information of another” to mean that the State must prove that the defendant knew that the personal identifying information belonged to another person. *See also People v. Hernandez*, 2012 IL App (1st) 092841, 967 N.E.2d 910 (the word “knowingly” as used in the identity theft statute applies to the “of another person” element of the offense).

In *People v. Bensen*, 2017 IL App (2d) 150085, 81 N.E.3d 613, the court construed the phrase “of another person” to mean that the personal identifying information on a credit card must identify someone other than the defendant as the cardholder. The Committee believes this applies to the offense as set forth in paragraphs [1], [2], [6] and [7].

Use applicable bracketed paragraphs and material.

The bracketed numbers [1] through [9] correspond to the alternatives of the same number in Instruction 13.77A, and the bracketed letters [A] through [C] correspond to the alternatives of the same letter in Instruction 13.77A. Select the corresponding alternatives.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

13.79 Affirmative Defense To Identity Theft

It is a defense to the charge of identity theft that the building permit applicant promptly informed the unit of local government that issued the building permit of any change in the [(roofing) (fire sprinkler)] contractor.

Committee Note

Instruction and Committee Note Approved July 18, 2014

720 ILCS 5/16-30 (West 2013), effective January 1, 2012.

Give Instruction 13.77.

Give Instruction 13.78.

Give this Instruction when the defense is raised by the evidence. See 720 ILCS 5/16-30(8) (West 2013).

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Chapter 14.00

ROBBERY AND BURGLARY

SYNOPSIS

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14.01 Definition Of Robbery

A person commits the offense of robbery when he [(intentionally) (knowingly) (recklessly)] takes property from the person or the presence of another by the use of force or by threatening the imminent use of force.

Committee Note

720 ILCS 5/18-1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 18-1 (1991)).

Give Instruction 14.02.

In *People v. Jones*, 149 Ill. 2d 288, 297, 172 Ill. Dec. 401, 405, 595 N.E.2d 1071, 1075 (1992), the Illinois Supreme Court held that “either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state.” Accordingly, the Committee has modified this instruction to include those three mental states as alternative elements of this offense.

Specific intent to permanently deprive is not an element of the offense of robbery. *People v. Banks*, 75 Ill. 2d 383, 27 Ill. Dec. 195, 388 N.E.2d 1244 (1979).

Use applicable bracketed material.

14.02 Issues In Robbery

To sustain the charge of robbery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took property from the person or presence of _____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-1 (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 18-1 (1991)).

Give Instruction 14.01.

In *People v. Jones*, 149 Ill. 2d 288, 297, 172 Ill. Dec. 401, 405, 595 N.E.2d 1071, 1075 (1992), the Illinois Supreme Court held that “either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state.” Accordingly, the Committee has modified this instruction to include those three mental states as alternative elements of this offense.

The Committee no longer believes that it is necessary to identify in the instruction the specific property alleged to have been taken from the victim.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.03 Definition Of Robbery Of A Victim Who Is 60 Years Of Age Or Over Or Who Is Physically Handicapped

A person commits the offense of robbery of a victim [(60 years of age or over) (who is physically handicapped)] when he [(intentionally) (knowingly) (recklessly)] takes property from the person or presence of another who is [(60 years of age or over) (a physically handicapped person)] by the use of force or by threatening the imminent use of force.

Committee Note

720 ILCS 5/18-1(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 18-1(b) (1991)).

Give Instruction 14.04.

P.A. 85-691, effective January 1, 1988, amended Section 18-1, to provide that robbery is raised from a Class 2 felony to a Class 1 felony if the victim is 60 years of age or over or is a physically handicapped person.

In *People v. White*, 241 Ill. App. 3d 291, 301, 181 Ill. Dec. 746, 754, 608 N.E.2d 1220, 1228 (2d Dist. 1993), the court agreed with the Committee's determination that the State must plead and prove each of the circumstances set forth in Section 18-1(b) that it is relying on to enhance this offense from a Class 2 to a Class 1 felony. However, the defendant does not have to *know* that the victim is 60 years of age or older or physically handicapped in order to be convicted under Section 18-1(b). See *White*, 241 Ill. App. 3d at 302, 608 N.E.2d at 1229, 181 Ill. Dec. at 755.

If the alleged victim is a physically handicapped person, give Instruction 4.10A defining that term.

In *People v. Jones*, 149 Ill. 2d 288, 297, 172 Ill. Dec. 401, 405, 595 N.E.2d 1071, 1075 (1992), the Illinois Supreme Court held that "either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state." Accordingly, the Committee has modified this instruction to include those three mental states as alternative elements of this offense.

Specific intent to deprive permanently is not an element of the offense of robbery. *People v. Banks*, 75 Ill. 2d 383, 27 Ill. Dec. 195, 388 N.E.2d 1244 (1979).

Use applicable bracketed material.

14.04 Issues In Robbery Of A Victim Who Is 60 Years Of Age Or Over Or Who Is Physically Handicapped

To sustain the charge of robbery of a victim [(60 years of age or over) (who is physically handicapped)], the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took property from the person or presence of _____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force; and

Third Proposition: That the person from whom the defendant took property was [(60 years of age or over) (a physically handicapped person)].

If you find from your consideration of all the evidence that each of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-1(b) (West 1992) (formerly Ill. Rev. Stat. ch. 38, § 18-1(b) (1991)).

Give Instruction 14.03.

In *People v. Jones*, 149 Ill. 2d 288, 297, 172 Ill. Dec. 401, 405, 595 N.E.2d 1071, 1075 (1992), the Illinois Supreme Court held that “either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state.” Accordingly, the Committee has modified this instruction to include those three mental states as alternative elements of this offense.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.05 Definition Of Armed Robbery

A person commits the offense of armed robbery when he, [while carrying on or about his person, or is otherwise armed with (a dangerous weapon other than a firearm) (a firearm),] [during the commission of the offense (personally discharges a firearm) (personally discharges a firearm that proximately causes (great bodily harm) (permanent disability) (permanent disfigurement) (death) to another person)], and] knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force.

Committee Note

Committee Note and Instruction Approved January 24, 2014

720 ILCS 5/18-2 (West 2013), amended by P.A. 91-404, effective January 1, 2000, by inserting the subsection (a)(1) designation, and inserting “other than a firearm” following “dangerous weapon” in subsection (a)(1); adding subsections (a)(2) through (a)(4); and in subsection (b) inserting “in violation of subsection (a)(1)” in the first sentence, and adding the second, third, and fourth sentences.

Give Instruction 14.06.

When the alleged weapon in question is not inherently dangerous, give Instruction 4.17. *See People v. Skelton*, 83 Ill. 2d 58, 414 N.E.2d 455 (1980).

Specific intent to permanently deprive is not an element of the offense of robbery. *People v. Banks*, 75 Ill. 2d 383, 388 N.E.2d 1244 (1979).

Use applicable bracketed material.

14.06 Issues In Armed Robbery

To sustain the charge of armed robbery, the State must prove the following propositions:

First Proposition: That the defendant knowingly took property from the person or presence of _____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force; and

Third Proposition: That the defendant carried on or about his person, or was otherwise armed with [(a dangerous weapon other than a firearm) (a firearm)] at the time of the taking.

[or]

Third Proposition: That the defendant, during the commission of the offense, personally discharged a firearm [that proximately caused (great bodily harm) (permanent disability) (permanent disfigurement) (death) to another person].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note*Committee Note and Instruction Approved January 24, 2014*

720 ILCS 5/18-2 (West 2013), amended by P.A. 91-404, effective January 1, 2000, by inserting the subsection (a)(1) designation, and inserting “other than a firearm” following “dangerous weapon” in subsection (a)(1); adding subsections (a)(2) through (a)(4); and in subsection (b) inserting “in violation of subsection (a)(1)” in the first sentence, and adding the second, third, and fourth sentences.

Give Instruction 14.05.

When the alleged weapon in question is not inherently dangerous, give Instruction 4.17. *See People v. Skelton*, 83 Ill. 2d 58, 414 N.E.2d 455 (1980).

Specific intent to permanently deprive is not an element of the offense of robbery. *People v. Banks*, 75 Ill. 2d 383, 388 N.E.2d 1244 (1979).

The Committee no longer believes that it is necessary to identify in the instruction the specific property alleged to have been taken from the victim.

Insert in the blank the name of the victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. Give Instruction 5.03.

14.07 Definition Of Burglary—Unauthorized Entry

A person commits the offense of burglary when he, without authority, knowingly enters a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof] with intent to commit therein the offense of _____.

Committee Note

720 ILCS 5/19-1 (West 2022).

Give Instruction 14.08.

Give Instruction 23.43B, defining the term “motor vehicle,” if the charging instrument alleges that the object entered was a motor vehicle and if there is an issue as to whether the object of entry was a motor vehicle.

Give Instruction 14.07A when an issue arises regarding the defendant’s criminal intent when he entered the building, house trailer, watercraft, aircraft, railroad car, motor vehicle, school, day care center, day care home, group day care home, part day child care facility, or place of worship and whether this intent, or lack thereof, makes his entry with authority” or “without authority.” See the Committee Note to Instruction 14.07A.

Insert in the blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use applicable bracketed material.

14.07A Unauthorized Entry—Limited Authority Doctrine—Burglary

The defendant's entry into a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] is "without authority" if, at the time of entry, the defendant has an intent to commit a criminal act within the [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] regardless of whether the defendant was initially invited in or received consent to enter.

However, the defendant's entry into the [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] is "with authority" if the defendant enters without criminal intent and was initially invited in or received consent to enter, regardless of what the defendant does after he enters.

Committee Note

This instruction should be given *only* when an issue arises regarding the defendant's criminal intent when he entered the building, house trailer, watercraft, aircraft, railroad car, motor vehicle, school, day care center, day care home, group day care home, part day child care facility, or place of worship and whether this intent, or lack thereof, affects the status of his entry—"with authority" or "without authority." See *People v. Bush*, 157 Ill. 2d 248, 253–54, 623 N.E.2d 1361, 1364 (1993).

The "limited-authority" doctrine provides that a defendant's authority to enter a building, house trailer, watercraft, aircraft, railroad car, motor vehicle, school, day care center, day care home, group day care home, part day child care facility, or place of worship is limited only to the specific purpose for which he entered. Thus, the defendant's entry is "without authority" if prior to entering, the defendant intends to commit a criminal act within the building, house trailer, watercraft, aircraft, railroad car, motor vehicle, school, day care center, day care home, group day care home, part day child care facility, or place of worship. When this is the case, the status of his entry is *not affected* by whether he was invited into or received consent to enter the building, house trailer, watercraft, aircraft, railroad car, motor vehicle, school, day care center, day care home, group day care home, part day child care facility, or place of worship. As noted by the court in *Bush*,

No individual who is granted access to a dwelling can be said to be an authorized entrant if he intends to commit criminal acts therein, because, if such intentions had been communicated to the owner at the time of entry, it would have resulted in the individual's being barred from the premises *ab initio*.

Bush, 157 Ill. 2d at 253–54, 623 N.E.2d at 1364. However, if the defendant does not form his criminal intent until after entering, then his invited or consented entry is "with authority." *Bush*, 157 Ill. 2d at 253–54, 623 N.E.2d at 1364; *People v. Bailey*, 188 Ill. App. 3d 278, 284–87, 543 N.E. 2d 1338, 1341–43 (5th Dist. 1989).

In *People v. Johnson*, 2019 IL 123318, the Illinois Supreme Court held that this instruction is consistent with the Illinois Supreme Court's holding in *People v. Weaver*, 41 Ill. 2d 434, 243 N.E.2d 245 (1968). *Johnson*, 2019 IL 123318, ¶ 6. In *Weaver*, the Illinois Supreme Court found that the "authority to enter a business building, or other building open to the public, extends only to those who enter with a purpose consistent with the reason the building is open." *Weaver*, 41 Ill. 2d at 439, 243 N.E.2d 245. The *Weaver* court concluded that "[a]n entry with the intent to commit a theft was not within the authority granted patrons." *Id.* Following *Weaver*, courts have consistently applied the limited authority doctrine to burglary by entry of business buildings. *United States v. Glispie*, 2020 IL 125483, ¶ 13.

When urged to extend *Weaver*'s limited authority doctrine to burglary by remaining, the Illinois Supreme Court declined. *People v. Bradford*, 2016 IL 118674, ¶¶ 21–25; see also *Glispie*, 2020 IL 125483, ¶ 13 (*Bradford* "declining to extend *Weaver*'s analysis to burglary by remaining"). Nothing in *Bradford* prevents the application of *Weaver*'s holding to burglary by entry. *Johnson*, 2019 IL 123319, ¶ 21.

14.08 Issues In Burglary—Unauthorized Entry

To sustain the charge of burglary by unauthorized entry, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof]; and

Second Proposition: That the defendant did so without authority; and

Third Proposition: That the defendant did so with intent to commit therein the offense of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-1 (West 2022).

Give Instruction 14.07.

Insert in the blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.09 Definition Of Burglary—Authorized Entry But Unauthorized Remaining Within

A person commits the offense of burglary when he knowingly enters with authority a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof] and thereafter without authority remains within that [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof] with intent to commit therein the offense of _____.

Committee Note

720 ILCS 5/19-1 (West 2022).

Give Instruction 14.10.

Give Instruction 23.43B, defining the term “motor vehicle,” if the charging instrument alleges that the object entered was a motor vehicle and if there is an issue as to whether the object of entry was a motor vehicle.

An individual commits burglary by remaining in a public place only where he exceeds his physical authority to be on the premises. *People v. Bradford*, 2016 IL 118674, ¶ 31; 50 N.E.3d 1112, 1120 (2016). The *Bradford* court explained:

Under this definition, burglary by remaining includes situations in which an individual enters a public building lawfully, but, in order to commit a theft or felony, (1) hides and waits for the building to close, (2) enters unauthorized areas within the building, or (3) continues to remain on the premises after his authority is explicitly revoked. Conversely, an individual who enters a building lawfully, shoplifts merchandise within areas which are open to the public, then leaves during business hours, is guilty of ordinary retail theft.

Bradford, 2016 IL 118674, ¶ 31; 50 N.E.3d at 1120.

Where an entry is unauthorized, it is error to use the “remains within” alternative in burglary instructions. *People v. Tinkler*, 85 Ill. App. 3d 528, 531 (3rd Dist. 1980).

Insert in the blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use applicable bracketed material.

14.10 Issues In Burglary—Authorized Entry But Unauthorized Remaining Within

To sustain the charge of burglary within a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof], the State must prove the following propositions:

First Proposition: That the defendant knowingly entered a[n] [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof]; and

Second Proposition: That the defendant did so with authority; and

Third Proposition: That the defendant thereafter, without authority, knowingly remained within that [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof]; and

Fourth Proposition: That the defendant remained within that [(building) (house trailer) (watercraft) (aircraft) (railroad car) (motor vehicle) (school) (day care center) (day care home) (group day care home) (part day child care facility) (place of worship)] [or any part thereof] with the intent to commit therein the offense of_____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-1 (West 2022).

Give Instruction 14.09.

Insert in the blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.11 Definition Of Possession Of Burglary Tools

A person commits the offense of possession of burglary tools when he knowingly possesses any [(key) (tool) (instrument) (device) (explosive)] suitable for use in breaking into a[n] [(building) (housetrailer) (watercraft) (aircraft) (motor vehicle) (railroad car) (depository designed for the safekeeping of property)] [or any part thereof] with intent to enter any such place and with intent to commit therein the offense of _____.

Committee Note

720 ILCS 5/19-2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 19-2 (1991)).

When possession is the essence of the crime, it must be “knowingly.” Chapter 720, Section 4-2; *People v. Smith*, 20 Ill. 2d 345, 169 N.E.2d 777 (1960). Give Instruction 4.16.

The insertion in the specific intent clause at the conclusion of the instruction should be taken from the information or indictment. It should be either theft or the particular felony specified in the indictment or the information as the object of the intended entry. See Committee Note to Instruction 14.05.

It is not necessary to prove that the defendant possessed the burglary tools with specific intent to break and enter into a particular building. See *People v. Taranto*, 2 Ill. 2d 476, 119 N.E.2d 221 (1954); *People v. Matthews*, 122 Ill. App. 2d 264, 258 N.E.2d 378 (2d Dist. 1970).

Use applicable bracketed material.

14.12 Issues In Possession Of Burglary Tools

To sustain the charge of possession of burglary tools, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a[n] [(key) (tool) (instrument) (device) (explosive)] suitable for use in breaking into a[n] [(building) (housetrailer) (watercraft) (aircraft) (motor vehicle) (railroad car) (depository designed for the safekeeping of property)] [or any part thereof]; and

Second Proposition: That the defendant intended to enter such a place; and

Third Proposition: That the defendant intended to commit therein the offense of

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all of the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-2 (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 19-2 (1991)).

Give Instruction 14.11.

See Committee Note to Instructions 14.07 and 14.11, concerning selection of the appropriate offense for use at the conclusion of the Third Proposition.

The Committee recommends that, at the request of either party, or *sua sponte*, the court define the offense (theft or the specified felony) alleged as the object of the intended entry.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.12A Definition Of Unlawful Sale Of Burglary Tools

A person commits the offense of unlawful sale of burglary tools when he knowingly [(sells) (transfers)] [(any key) (any key, including a key designed for lock bumping,) (a lock pick)] specifically manufactured or altered for use in breaking into [(a building) (a housetrailer) (a watercraft) (an aircraft) (a motor vehicle) (a railroad car) (any depository designed for the safekeeping of property)] [or any part of that property].

Committee Note

Instruction and Committee Note Approved January 24, 2014.

720 ILCS 5/19-2.5 (West 2013), added by P.A. 96-1307, § 5, effective January 1, 2011.

Give Instruction 14.12B.

When applicable, give Instruction 14.12C, defining “lock bumping.”

When applicable, give Instruction 23.43B, defining “motor vehicle.”

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury. Section 19-2.5 sets forth an exception to the offense of unlawful sale of burglary tools. The statute does not apply to the sale or transfer of any key or lock pick described in this instruction to any peace officer or other employee of a law enforcement agency, or to any person or agency licensed as a locksmith pursuant to statute, or to any person engaged in the business of towing vehicles, or to any person engaged in the business of lawful repossession of property who possesses a valid Repossessor-ICC Authorization Card. If the defendant relies on this exception, it will be necessary to give additional instructions.

14.12B Issues In Unlawful Sale Of Burglary Tools

To sustain the charge of unlawful sale of burglary tools, the State must prove the following proposition:

That the defendant knowingly [(sold) (transferred)] [(any key) (any key, including a key designed for lock bumping,) (a lock pick)] specifically manufactured or altered for use in breaking into [(a building) (a housetrailer) (a watercraft) (an aircraft) (a motor vehicle) (a railroad car) (any depository designed for the safe keeping of property)] [or any part of that property].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved January 24, 2014.

720 ILCS 5/19-2.5 (West 2013), added by P.A. 96-1307, § 5, effective January 1, 2011.

Give Instruction 14.12A.

When applicable, give Instruction 14.12C, defining “lock bumping.”

When applicable, give Instruction 23.43B, defining “motor vehicle.”

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Section 19-2.5 sets forth an exception to the offense of unlawful sale of burglary tools. The statute does not apply to the sale or transfer of any key or lock pick described in this instruction to any peace officer or other employee of a law enforcement agency, or to any person or agency licensed as a locksmith pursuant to statute, or to any person engaged in the business of towing vehicles, or to any person engaged in the business of lawful repossession of property who possesses a valid Repossessor-ICC Authorization Card. If the defendant relies on this exception, it will be necessary to give additional instructions.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in the proposition. Give Instruction 5.03.

14.12C Definition Of Lock Bumping

The term “lock bumping” means a lock picking technique for opening a pin tumbler lock using a specially-crafted bumpkey.

Committee Note

Instruction and Committee Note Approved January 24, 2014.

720 ILCS 5/19-2.5 (West 2013), added by P.A. 96-1307, § 5, effective January 1, 2011.

Give this instruction when the defendant is charged with unlawful sale of burglary tools under Section 19-2.5(b) and it is alleged he sold or transferred a key designed for lock bumping.

14.13 Definition Of Residential Burglary—Unauthorized Entry

A person commits the offense of residential burglary when he knowingly and without authority enters the dwelling place of another [or any part thereof] with the intent to commit therein the offense of _____.

Committee Note

720 ILCS 5/19-3 (West 2022).

Give Instruction 14.14.

Give Instruction 4.03, defining the term “dwelling place.” In *People v. Donoho*, 245 Ill. App. 3d 938, 942, 615 N.E.2d 805, 807 (2d Dist. 1993), the court held that the trial court must give an instruction defining “dwelling” in residential burglary cases.

Give Instruction 11.53A when an issue arises regarding the defendant’s criminal intent when he entered the dwelling and whether this intent, or lack thereof, makes his entry into the dwelling “with authority” or “without authority.” This “limited authority” doctrine applies to residential burglary by unauthorized entry. *United States v. Glispie*, 2020 IL 125483, ¶ 22, 181 N.E.3d 719, 725.

Insert in the blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use applicable bracketed material.

14.13A Definition Of Residential Burglary—Authorized Entry But Unauthorized Remaining Within

A person commits the offense of residential burglary when he knowingly enters with authority the dwelling place of another [or any part thereof] and thereafter without authority remains within that dwelling place [or any part thereof] with the intent to commit therein the offense of _____.

Committee Note

720 ILCS 5/19-3(a) (West 2022).

Give Instruction 14.14A.

Give Instruction 4.03, defining the term “dwelling place.” In *People v. Donoho*, 245 Ill. App. 3d 938, 942, 615 N.E.2d 805, 807 (2d Dist. 1993), the court held that the trial court must give an instruction defining “dwelling” in residential burglary cases.

Insert in the blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use applicable bracketed material.

14.13B Definition Of Residential Burglary—False Representation To Gain Entry

A person commits the offense of residential burglary when he falsely represents himself [to be a representative of any (unit of government) (construction company) (telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another, with the intent to [(commit therein the offense of _____) (facilitate the commission therein the offense of _____)].

Committee Note

720 ILCS 5/19-3(a-5) (West 2022).

Give Instruction 14.14B.

Give Instruction 4.03, defining the term “dwelling place.” In *People v. Donoho*, 245 Ill. App. 3d 938, 942, 615 N.E.2d 805, 807 (2d Dist. 1993), the court held that the trial court must give an instruction defining “dwelling” in residential burglary cases.

If the false status of the defendant is other than those listed, insert the defendant’s false status in the first blank.

Insert in the second blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use the applicable bracketed material.

14.14 Issues In Residential Burglary—Unauthorized Entry

To sustain the charge of residential burglary, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered the dwelling place of another [or any part thereof]; and

Second Proposition: That the defendant did so without authority; and

Third Proposition: That the defendant did so with the intent to commit therein the offense of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-3(a) (West 2022).

Give Instruction 14.13.

See the Committee Note to Instruction 14.07, concerning the selection of the appropriate offense for use at the conclusion of the Third Proposition.

Insert in the blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.14A Issues in Residential Burglary—Authorized Entry But Unauthorized Remaining Within

To sustain the charge of residential burglary, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered the dwelling place of another [or any part thereof]; and

Second Proposition: That the defendant did so with authority; and

Third Proposition: That the defendant thereafter, without authority, knowingly remained within that dwelling place [or any part thereof]; and

Fourth Proposition: That the defendant remained within that dwelling place [or any part thereof] with the intent to commit therein the offense of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-3(a) (West 2022).

Give Instruction 14.13A.

Insert in the blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.14B Issues in Residential Burglary—False Representation To Gain Entry

To sustain the charge of residential burglary by false representation to gain entry, the State must prove the following propositions:

First Proposition: That the defendant falsely represented himself [to be a representative of any (unit of government) (construction company) (telecommunications company) (utility company) (_____)] for the purpose of gaining entry to the dwelling place of another; and

Second Proposition: That the defendant did so with the intent to [(commit therein the offense of _____) (facilitate the commission therein the offense of _____)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-3(a-5) (West 2022).

Give Instruction 14.13B.

If the false status of the defendant is other than those listed, insert the defendant's false status in the first blank.

Insert in the second blank the intended offense (theft or the specified felony) alleged as the objective of the burglary. Give the definition instruction for that offense.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

14.15 Definition Of Criminal Fortification Of A Residence Or Building

A person commits the offense of criminal fortification of a residence or building when, with the intent to prevent the lawful entry of a law enforcement officer [or another], he maintains a residence or building in a fortified condition, knowing that such residence or building is used for the [(manufacture) (storage) (delivery) (trafficking)] of [(cannabis) (_____, a controlled substance)].

Committee Note

720 ILCS 5/19-5(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 19-5(a) (1991)), added by P.A. 86-760, effective January 1, 1990.

Give Instruction 14.16.

Give Instruction 14.15A, defining the term “fortified condition.”

If the charging document refers to a law enforcement officer, do not use the bracketed phrase “or another.”

Use applicable bracketed material.

14.15A Definition Of Fortified Condition

The term “fortified condition” means preventing or impeding entry through the use of steel doors, wooden planking, crossbars, alarm systems, dogs, or other similar means.

Committee Note

720 ILCS 5/19-5(b) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 19-5(b) (1991)).

14.16 Issues In Criminal Fortification Of A Residence Or Building

To sustain the charge of criminal fortification of a residence or building, the State must prove the following propositions:

First Proposition: That the defendant maintained a residence or building in a fortified condition; and

Second Proposition: That the defendant did so knowing the residence or building was used for the [(manufacture) (storage) (delivery) (trafficking)] of [(cannabis) (_____) , a controlled substance)]; and

Third Proposition: That the defendant did so with the intent to prevent the lawful entry of [(a law enforcement officer) (_____)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-5(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 19-5(a) (1991)), added by P.A. 86-760, effective January 1, 1990.

Give Instructions 14.15 and 14.15A.

When applicable, insert in the blank in the Second Proposition the name of the controlled substance.

When applicable, insert in the blank in the Third Proposition the name or designation of “another” used in the charging document if not a law enforcement officer.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.17 Definition Of Criminal Trespass To A Residence

A person commits the offense of criminal trespass to a residence when, without authority, he knowingly [(enters) (remains within)] any residence.

Committee Note

720 ILCS 5/19-4(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 19-4(a) (1991)).

Give Instructions 14.17A and 14.18.

Use applicable bracketed material.

14.17A Definition Of A Residence—Criminal Trespass

The word “residence”

[1] includes a house trailer.

[or]

[2] means the portion of a multi-unit residential building or complex which is the actual dwelling place of any person[, and does not include such places as common recreational areas or lobbies].

Committee Note

720 ILCS 5/19-4(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 19-4(a) (1991)).

When appropriate, use the final bracketed material prohibiting the application of the statute to common recreational areas or lobbies.

Use applicable paragraphs.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

14.18 Issues In Criminal Trespass To A Residence

To sustain the charge of criminal trespass to a residence, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(entered) (remained within)] a residence; and

Second Proposition: That the defendant [(entered) (remained within)] the residence without authority to do so.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/19-4(a) (West 1999) (formerly Ill. Rev. Stat. ch. 38, § 19-4(a) (1991)).

Give Instruction 14.17.

The Committee takes no position on whether defendant's knowledge of his non-authority to enter or remain within the residence is an element of the offense. See *People v. Brown*, 150 Ill. App. 3d 535, 103 Ill. Dec. 809, 501 N.E.2d 1347 (3d Dist. 1986).

When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

14.19 Definition Of Aggravated Robbery

A person commits the offense of aggravated robbery when he [(intentionally) (knowingly) (recklessly)] takes property from the person or presence of another by the use of force or by threatening the imminent use of force while indicating verbally or by his actions to the victim that he is presently armed with a firearm.

A person can commit the offense of aggravated robbery even though it is later determined that he had no firearm in his possession when he committed the robbery.

Committee Note

720 ILCS 5/18-5 (West Supp. 1993), added by P.A. 88-144, effective January 1, 1994, and amended by P.A. 88-670, effective December 2, 1994.

Give Instruction 14.20.

When appropriate, give Instruction 18.35G, defining “firearm.”

In *People v. Jones*, 149 Ill. 2d 288, 297, 172 Ill. Dec. 401, 405, 595 N.E.2d 1071, 1075 (1992), the Illinois Supreme Court held that “either intent, knowledge, or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state.” The Committee believes this holding applies as well to aggravated robbery. Accordingly, the Committee has included those three mental states as alternative elements of this offense. See 720 ILCS 5/4-3(b).

Specific intent to permanently deprive is not an element of the offense of robbery. *People v. Banks*, 75 Ill. 2d 383, 27 Ill. Dec. 195, 388 N.E.2d 1244 (1979).

Use applicable bracketed material.

14.20 Issues In Aggravated Robbery

To sustain the charge of aggravated robbery, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took property from the person or presence of _____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force; and

Third Proposition: That the defendant did so while indicating verbally or by his actions to the victim that he was at that time armed with a firearm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-5 (West Supp. 1993), added by P.A. 88-144, effective January 1, 1994, and amended by P.A. 88-670, effective December 2, 1994.

Give Instruction 14.19.

When appropriate, give Instruction 18.35G, defining “firearm.”

The Committee believes that this instruction need not identify the specific property alleged to have been taken from the victim.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.21 Definition Of Vehicular Hijacking

A person commits the offense of vehicular hijacking when he [(intentionally) (knowingly) (recklessly)] takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force.

Committee Note

720 ILCS 5/18-3 (West Supp. 1993), added by P.A. 88-351, effective August 13, 1993.

Give Instruction 14.22.

Give Instruction 23.43B, defining the term “motor vehicle,” if there is an issue as to whether the item taken was a motor vehicle.

In *People v. Jones*, 149 Ill. 2d 288, 297, 172 Ill. Dec. 401, 405, 595 N.E.2d 1071, 1075 (1992), the Illinois Supreme Court held that “either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state.” Because the offense of vehicular hijacking closely resembles robbery, the Committee believes the holding in *Jones* applies to vehicular hijacking as well. Accordingly, the Committee has included alternative mental states for this offense.

Specific intent to permanently deprive is not an element of the offense of robbery. *People v. Banks*, 75 Ill. 2d 383, 27 Ill. Dec. 195, 388 N.E.2d 1244 (1979).

Use applicable bracketed material.

14.22 Issues In Vehicular Hijacking

To sustain the charge of vehicular hijacking, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took a motor vehicle from the person or the immediate presence of _____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-3 (West Supp. 1993), added by P.A. 88-351, effective August 13, 1993.

Give Instruction 14.21.

In *People v. Jones*, 149 Ill. 2d 288, 297, 172 Ill. Dec. 401, 405, 595 N.E.2d 1071, 1075 (1992), the Illinois Supreme Court held that “either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state.” Because the offense of vehicular hijacking closely resembles robbery, the Committee believes the holding in *Jones* applies to vehicular hijacking as well. Accordingly, the Committee has included alternative mental states for this offense.

The Committee does not believe that it is necessary to identify in this instruction the specific motor vehicle alleged to have been taken from the victim.

Insert in the blank the name of the victim.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

14.23 Definition Of Aggravated Vehicular Hijacking

A person commits the offense of aggravated vehicular hijacking when he [(intentionally) (knowingly) (recklessly)] takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force, and

[1] the person from whose immediate presence the motor vehicle is taken is a [(physically handicapped person) (person 60 years of age or over)].

[or]

[2] a person under 16 years of age is a passenger in the motor vehicle at the time of the offense.

[or]

[3] he carries on or about his person or is otherwise armed with a dangerous weapon.

Committee Note

720 ILCS 5/18-4 (West Supp. 1993), added by P.A. 88-351, effective August 13, 1993.

Give Instruction 14.24.

Give Instruction 23.43B, defining the term “motor vehicle,” if there is an issue as to whether the item taken was a motor vehicle.

In *People v. Jones*, 149 Ill. 2d 288, 297, 172 Ill. Dec. 401, 405, 595 N.E.2d 1071, 1075 (1992), the Illinois Supreme Court held that “either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state.” Because the offense of aggravated vehicular hijacking closely resembles robbery, the Committee believes the holding in *Jones* applies to aggravated vehicular hijacking as well. Accordingly, the Committee has included alternative mental states for this offense.

Specific intent to permanently deprive is not an element of the offense of robbery. *People v. Banks*, 75 Ill. 2d 383, 27 Ill. Dec. 195, 388 N.E.2d 1244 (1979).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

14.24 Issues In Aggravated Vehicular Hijacking

To sustain the charge of aggravated vehicular hijacking, the State must prove the following propositions:

First Proposition: That the defendant [(intentionally) (knowingly) (recklessly)] took a motor vehicle from the person or the immediate presence of _____; and

Second Proposition: That the defendant did so by the use of force or by threatening the imminent use of force; and

[1] *Third Proposition:* That the person from whose immediate presence the motor vehicle was taken was a [(physically handicapped person) (person 60 years of age or over)].

[or]

[2] *Third Proposition:* That a person under 16 years of age was a passenger in the motor vehicle at the time of the offense.

[or]

[3] *Third Proposition:* That the defendant carried on or about his person or was otherwise armed with a dangerous weapon at the time of the taking.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/18-4 (West Supp. 1993), added by P.A. 88-351, effective August 13, 1993.

Give Instruction 14.23.

When the weapon in question is not inherently dangerous, give Instruction 4.17. See *People v. Skelton*, 83 Ill. 2d 58, 46 Ill. Dec. 571, 414 N.E.2d 455 (1980).

In *People v. Jones*, 149 Ill. 2d 288, 297, 172 Ill. Dec. 401, 405, 595 N.E.2d 1071, 1075 (1992), the Illinois Supreme Court held that “either intent, knowledge or recklessness is an element of robbery even though the statutory definition of robbery does not expressly set forth a mental state.” Because the offense of aggravated vehicular hijacking closely resembles robbery, the Committee believes the holding in *Jones* applies to aggravated vehicular hijacking as well. Accordingly, the Committee has included alternative mental states for this offense.

The Committee does not believe that it is necessary to identify in this instruction the specific motor vehicle alleged to have been taken from the victim.

Insert in the blank the name of the victim.

The bracketed numbers are present solely for the guidance of court and counsel

and should not be included in the instruction submitted to the jury.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Chapter 15.00

ARSON AND RELATED OFFENSES

SYNOPSIS

- 15.01 Definition Of Arson
- 15.02 Issues In Arson—Real Property
- 15.02A Issues In Arson—Personal Property Having A Value Of \$150 Or More
- 15.02B Issues In Arson—Insurance Fraud
- 15.03 Definition Of Aggravated Arson
- 15.04 Issues In Aggravated Arson
- 15.05 Definition Of Possession Of Explosives Or Incendiary Device
- 15.06 Issues In Possession Of Explosives Or Incendiary Devices With Intent To Use
- 15.06A Issues In Possession Of Explosives Or Incendiary Devices Knowing Of Another's Intended Use
- 15.07 Definition Of Residential Arson
- 15.08 Issues In Residential Arson
- 15.09 Definition Of Place Of Worship Arson
- 15.10 Issues In Place Of Worship Arson

15.01 Definition Of Arson

A person commits the offense of arson when he, by means of [(fire) (explosive)], knowingly

[1] damages real property of another [without his consent].

[or]

[2] damages any personal property having a value of \$150 or more of another [without his consent].

[or]

[3] damages any [(real property) (personal property having a value of \$150 or more)] with intent to defraud an insurer. [The phrase “property of another” means a building or other property, in which a person other than the defendant has an interest which the defendant has no authority to defeat or impair, even though the defendant may also have an interest in the building or property.]

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1(a) (West 2018).

When paragraph [1] is used, give Instruction 15.02. When paragraph [2] is used, give Instruction 15.02A. When paragraph [3] is used, give Instruction 15.02B.

When the defendant asserts the affirmative defense of consent, use the bracketed phrase “without his consent.” See *People v. White*, 22 Ill. App. 3d 206 (5th Dist. 1974).

Give the last bracketed paragraph only when the evidence shows the defendant claims some interest in the property.

The Committee believes that the issue of whether the property is real or personal is a legal issue to be determined by the court.

The \$150 limitation applies only to personal property and does not relate to the amount of damage incurred to the personal property, but rather to the value of the item damaged. *People v. Johnson*, 23 Ill. App. 3d 886, 321 N.E.2d 38 (1st Dist. 1974); *People v. Helm*, 9 Ill. App. 3d 143, 291 N.E.2d 680 (4th Dist. 1973).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

15.02 Issues In Arson—Real Property

To sustain the charge of arson, the State must prove the following propositions:

First Proposition: That the defendant, by means of [(fire) (explosive)], knowingly damaged the real property of _____;

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1(a) (West 2018).

Give Instruction 15.01.

The Committee believes that the issue of whether the property is real or personal is a legal issue to be determined by the court.

Insert in the blanks the name of the property owner.

Whenever the jury is to be instructed on an affirmative defense, combine this instruction with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without consent, the Committee has concluded that the phrase “without his consent” need not be used in this issues instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

15.02A Issues In Arson—Personal Property Having A Value Of \$150 Or More

To sustain the charge of arson, the State must prove the following propositions:

First Proposition: That the defendant, by means of [(fire) (explosive)], knowingly damaged the personal property of _____; and

Second Proposition: That the personal property had a value of \$150 or more.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1(a) (West 2018).

Give Instruction 15.01.

The Committee believes the issue of whether the property is real or personal is a legal issue to be determined by the court.

Insert in the blanks the name of the property owner.

Whenever the jury is to be instructed on an affirmative defense, combine this instruction with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without consent, the Committee has concluded that the phrase “without his consent” need not be used in this issues instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

15.02B Issues In Arson—Insurance Fraud

To sustain the charge of arson, the State must prove the following propositions:

First Proposition: That the defendant, by means of [(fire) (explosive)], knowingly damaged [(real property) (personal property having a value of \$150 or more)]; and

Second Proposition: That the defendant did so with the intent to defraud an insurer.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1(a) (West 2018).

Give Instruction 15.01.

The Committee believes that the issue of whether the property is real or personal is a legal issue to be determined by the court.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

15.03 Definition Of Aggravated Arson

A person commits the offense of aggravated arson when, in the course of committing arson, he knowingly damages, partially or totally, any [(building) (structure)] [including any adjacent [(building) (structure)]] [and] [including all or any part of a (school building) (house trailer) (watercraft) (motor vehicle) (railroad car)], and

[1] he knows or reasonably should know that one or more persons are present therein.

[or]

[2] any person suffers [(great bodily harm) (permanent disability) (permanent disfigurement)] as a result of the [(fire) (explosion)].

[or]

[3] a [(fireman) (policeman) (correctional officer)] who is present at the scene acting in the line of duty is injured as a result of the [(fire) (explosion)].

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1.1(a) (West 2018).

Give Instruction 15.04.

Give Instruction 15.01.

Use applicable paragraphs and bracketed material.

When the defendant asserts the affirmative defense of consent, use the bracketed phrase “without his consent.” See *People v. White*, 22 Ill. App. 3d 206 (5th Dist. 1974).

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

15.04 Issues In Aggravated Arson

To sustain the charge of aggravated arson, the State must prove the following propositions:

First Proposition: That the defendant, in the course of committing arson, knowingly damaged, partially or totally, any [(building) (structure)] [including any adjacent [(building) (structure)]] [and] [including all or any part of a (school building) (house trailer) (watercraft) (motor vehicle) (railroad car)]; and

Second Proposition: That when the defendant did so, he knew or reasonably should have known that one or more persons were present therein.

[or]

Second Proposition: That _____ suffered [(great bodily harm) (permanent disability) (permanent disfigurement)] as a result of the [(fire) (explosion)].

[or]

Second Proposition: That _____ was a [(fireman) (policeman) (correctional officer)] who was present at the scene acting in the line of duty and was injured as a result of the [(fire) (explosion)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1.1(a) (West 2018).

Give Instruction 15.03.

Insert in the blank the name of the victim.

Whenever the jury is to be instructed on an affirmative defense, combine this instruction with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without consent, the Committee has concluded that the phrase “without his consent” need not be used in this issues instruction.

Use applicable paragraphs and bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

15.05 Definition Of Possession Of Explosives Or Incendiary Device

A person commits the offense of possession of [(explosives) (explosive or incendiary devices)] when he knowingly [(possesses) (manufactures) (transports)] any [(explosive compound) (timing or detonating device for use with any explosive compound or incendiary device)] and

[1] intends to use such [(explosive) (device)] to commit the offense[s] of _____.

[or]

[2] knows that another intends to use such [(explosive) (device)] to commit the offense[s] of _____.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-2(a) (West 2018).

Give both paragraphs [1] and [2] and Instructions 15.06 and 15.06A, when a person is charged in the alternative and proof is sufficient to submit both charges to the jury.

Give Instruction 4.16 when possession is an issue.

When possession is the essence of a crime it must be “knowingly.” 720 ILCS 5/4-2 (West 2015); *People v. Farmer*, 165 Ill. 2d 194, 207 (1995).

Insert in the blank in paragraph [1] the appropriate offense(s).

Insert in the blank in paragraph [2] the appropriate felony offense(s).

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

15.06 Issues In Possession Of Explosives Or Incendiary Devices With Intent To Use

To sustain the charge of possession of [(explosives) (explosive or incendiary devices)], the State must prove the following propositions:

First Proposition: That the defendant knowingly [(possessed) (manufactured) (transported)] a[n] [(explosive compound) (timing or detonating device for use with any explosive compound or incendiary device)]; and

Second Proposition: That the defendant intended to use such [(explosive compound) (timing or detonating device)] to commit the offense[s] of _____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-2(a) (West 2018).

Give Instruction 15.05.

Insert in the blank the appropriate offense(s).

Use applicable bracketed material. When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

15.06A Issues In Possession Of Explosives Or Incendiary Devices Knowing Of Another's Intended Use

To sustain the charge of possession of [(explosives) (incendiary devices)], the State must prove the following propositions:

First Proposition: That the defendant knowingly [(possessed) (manufactured) (transported)] a[n] [(explosive compound) (timing or detonating device for use with any explosive compound or incendiary device)]; and

Second Proposition: That the defendant knew that another intended to use such [(explosive compound) (timing or detonating device)] to commit the offense[s] of

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-2(a) (West 2018).

Give Instruction 15.05.

Insert in the blank the name of the appropriate felony offense(s).

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

15.07 Definition Of Residential Arson

A person commits the offense of residential arson when, in the course of committing an arson, he knowingly damages, partially or totally, any building or structure that is the dwelling place of another.

[The term dwelling place “of another” means a dwelling place in which a person other than the defendant has an interest which the defendant has no authority to defeat or impair, even though the defendant may also have an interest in the dwelling place].

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1(b) (West 2018).

Give Instruction 15.01.

Give Instruction 4.03, defining the term “dwelling place.”

Give Instruction 15.08.

The bracketed portion of the second paragraph is adapted from Instruction 15.01.

The brackets are present solely for the guidance of court and counsel and should not be included in the Instruction submitted to the jury.

15.08 Issues In Residential Arson

To sustain the charge of residential arson, the State must prove the following propositions:

First Proposition: That the defendant, in the course of committing an arson, knowingly damaged, partially or totally, a building or structure that was the dwelling place of [(another); (_____)];] and

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions have not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1(b) (West 2018).

Give Instruction 15.07.

If the owner of the dwelling place is specifically named in the charge, he or she may be named in this instruction in both the first and second propositions. Blank spaces appear in each proposition for this purpose.

Whenever the jury is to be instructed on an affirmative defense, combine this instruction with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without consent, the Committee has concluded that the phrase “without his consent” need not be used in this issues instruction.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one of whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

15.09 Definition Of Place Of Worship Arson

A person commits the offense of place of worship arson when, in the course of committing an arson, he knowingly damages, partially or totally, any place of worship.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1(b-5) (West 2018).

Give Instruction 15.01. Give Instruction 15.10.

15.10 Issues In Place Of Worship Arson

To sustain the charge of place of worship arson, the State must prove the following propositions:

First Proposition: That the defendant, in the course of committing an arson, knowingly damaged, partially or totally, any place of worship; and If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions have not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved October 26, 2018

720 ILCS 5/20-1(b-5) (West 2018).

Give Instruction 15.09.

Whenever the jury is to be instructed on an affirmative defense, combine this instruction with the appropriate instructions from Chapter 24–25.00. Because the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without consent, the Committee has concluded that the phrase “without his consent” need not be used in this issues instruction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one of whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

Chapter 16.00

CRIMINAL DAMAGE AND TRESPASS

SYNOPSIS

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- 16.01A Interest In The Property Not A Defense
- 16.01X Definition Of Criminal Defacement Of Property
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- 16.02X Issues In Criminal Defacement Of Property
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- 16.24 **Issues In Criminal Trespass To A Cemetery**

16.01 Definition Of Criminal Damage To Property

A person commits the offense of criminal damage to property when he

[1] knowingly damages any property of another [without his consent](.) (; and)]

[or]

[2] recklessly by means of [(fire)(explosive)] damages property of another[(.) (; and)]

[or]

[3] knowingly starts a fire on the land of another [without his consent](.) (; and)]

[or]

[4] knowingly injures a domestic animal of another without his consent(.) (; and)]

[or]

[5] knowingly deposits [(on the land) (in the building)] of another[, without his consent,] any [(stink bomb) (offensive smelling compound)] with the intent to interfere with the use by another of the [(land) (building)](; and)]

[or]

[6] knowingly damages any property with intent to defraud an insurer[(.) (; and)]

[7] the damage to the property [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds \$100,000)][(.) (and) the damage] [occurs to (property of a school) (property of a place of worship) (farm equipment) (immovable items of agricultural production) (property which memorializes or honors a [(group of)] [(police officer(s)) (fire fighter(s))]) (property which memorializes or honors [(a member) (members)]) of the [(United States Armed Forces) (National Guard)]) (property which memorializes or honors [(a veteran) (veterans)])],

Committee Note*Instruction and Committee Note Approved December 1, 2017*

720 ILCS 5/21-1 (West 2017), amended by P.A. 86-496, effective January 1, 1990; P.A. 86-1254, effective January 1, 1991; P.A. 88-406, effective August 20, 1993; P.A. 88-558, effective January 1, 1995; P.A. 89-8, effective March 21, 1995; P.A. 91-360, effective July 29, 1999; P.A. 92-454, effective January 1, 2002; P.A. 94-509, effective August 9, 2005; P.A. 95-553, effective June 1, 2008; P.A. 96-529, effective August 14, 2009; P.A. 97-1108, effective January 1, 2013; and, P.A. 98-315, effective January 1, 2014.

Give Instruction 16.02.

With respect to paragraph [6], the statutory language “other than as described in subsection (b) of Section 20-1” is disregarded because that material would not be of importance to the jury. However, both court and counsel should be aware of this limitation.

When the charge of criminal damage to property exceeding a specified value is

brought, the statute specifically states that the extent of the damage is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. Accordingly, give paragraph [7] when the value of the property exceeds the specified value.

Although not specifically stated in the statute, the same logic would apply to a determination regarding the enhanced classification for damage to certain specified property. When the charge alleges an enhanced class of felony based on damage to a specific type of property, as listed in sections (d)(1)(C),(G), (I), or (J), it is the opinion of the Committee that the trier of fact should determine, as an issue in the instruction, if the damaged property is of the type alleged in the charge. Accordingly, use the applicable bracketed material if paragraph [7] when the class of the offense is enhanced based on an allegation of damage to a specific statutorily stated type of property.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issues instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin “A person commits the offense of criminal damage to property in excess of \$300 when he . . .”.

For an offense brought under Section 21-1(a)(7), use Instruction 16.03. As stated in the Committee Note to 16.03, this section defines a separate and distinct offense from the other criminal damage to property sections and does not require a determination of the value of damage. This section does not have an enhancement for damage over a specified value.

For an offense brought under Section 21-1(a)(8) and (9), use Instruction 16.05. As stated in the Committee Note to 16.03, these offenses define separate and distinct offenses from other the other criminal damage to property sections and do not require a determination of the value of damage. These sections do not have an enhancement for damage over of a specified value.

When the defendant asserts an affirmative defense to paragraphs (1), (3), or (5) of subsection (a), use the bracketed phrase “without his consent” in bracketed paragraphs [1], [3], or [5] above. See 720 ILCS 5/21-1(c).

720 ILCS 5/21-1(a)(4) still requires proof that the injury occurred “without his or her consent.”

When there is an issue of whether the property was property of another, give Instruction 4.40 defining the term “property of another.”

If there is an issue regarding the defendant’s interest in the property, give Instruction 16.01A.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.01A Interest In The Property Not A Defense

When a defendant is charged with [(criminal damage to property) (criminal defacement of property)] of another, it is not a defense to the charge that the defendant also has an interest in the property.

Committee Note

This instruction should be given when a defendant is charged with criminal damage to property or criminal defacement of property and there is evidence that the defendant, as well as the alleged victim, has an interest in the property. See *People v. Jones*, 145 Ill.App.3d 835, 99 Ill.Dec. 636, 495 N.E.2d 1371 (3d Dist. 1986); *People v. Schneider*, 139 Ill.App.3d 222, 93 Ill.Dec. 712, 487 N.E.2d 379 (5th Dist. 1985).

Use applicable bracketed material.

16.01X Definition Of Criminal Defacement Of Property

A person commits the offense of criminal defacement of property (in excess of \$500) when he knowingly damages the property of another [without that person's consent] by defacing, deforming, or otherwise damaging such property by the use of paint or any similar substance or by the use of a writing instrument, etching tool, or any other similar device[[(.) (and) (.)] the damage to the property exceeds \$500[(.) (and the damage occurs to (property of a school) (property of a place of worship) (property which memorializes or honors [(an individual) (a group of)] [(police officer(s)) (fire fighter(s))]) (property which memorializes or honors [(a member) (members))] of the [(United States Armed Forces) (National Guard))] (property which memorializes or honors [(a veteran) (veterans)]))]].

Committee Note*Instruction and Committee Note Approved December 1, 2017*

720 ILCS 5/21-1.3 (West 2017), added by P.A. 88-406, effective August 20, 1993. Amended by P.A. 90-685, effective January 1, 1999; P.A. 91-360, effective July 29, 1999; P.A. 91-931, effective June 1, 2001; P.A. 95-553, effective June 1, 2008; P.A. 96-499, effective August 14, 2009; P.A. 97-1108, effective January 1, 2013; P.A. 98-315, effective January 1, 2014; P.A. 98-466, effective August 16, 2013; P.A. 98-756, effective July 16, 2014.

Give Instruction 16.02X. Use *only* for offenses allegedly committed on or after August 20, 1993.

When the charge of criminal defacement of property exceeding \$300 is brought, the Committee believes that the extent of the damage is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding that value. Accordingly, give the bracketed material when the value of the property exceeds \$300.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issues instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin “A person commits the offense of criminal defacement of property in excess of \$300 when he . . .”.

When the defendant asserts an affirmative defense, use the bracketed phrase “without that person's consent” above. See 720 ILCS 5/21-1.3(a).

When there is an issue of whether the property was property of another, give Instruction 4.40 defining the term “property of another.”

If there is an issue regarding the defendant's interest in the property, give Instruction 16.01A.

Use applicable bracketed material.

16.02 Issues In Criminal Damage To Property

To sustain the charge of criminal damage to property, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly damaged the property of _____ [(.) (; and)]

Second Proposition: That the damage to the property was [(more than \$300) (more than \$10,000) (more than \$100,000).]

[or]

Second Proposition: That the damage to the property [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds \$100,000)](.) and the damage occurred to [(property of a school) (property of a place of worship) (farm equipment) (immovable items of agricultural production) (property which memorializes or honors a [(group of)] [(police officer(s)) (fire fighter(s))]) (property which memorializes or honors [(a member) (members)] of the [(United States Armed Forces) (National Guard)]) (property which memorializes or honors [(a veteran) (veterans)])]].

[or]

[2] *First Proposition:* That the defendant recklessly, by means of [(fire) (explosive)], damaged the property of _____ [(.) (; and)]

Second Proposition: That the damage to the property was [(more than \$300) (more than \$10,000) (more than \$100,000).]

[or]

Second Proposition: That the damage to the property [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds \$100,000)](.) and the damage occurred to [(property of a school) (property of a place of worship) (farm equipment) (immovable items of agricultural production) (property which memorializes or honors a [(group of)] [(police officer(s)) (fire fighter(s))]) (property which memorializes or honors [(a member) (members)] of the [(United States Armed Forces) (National Guard)]) (property which memorializes or honors [(a veteran) (veterans)])]].

[or]

[3] *First Proposition:* That the defendant knowingly started a fire on the land of _____ and

Second Proposition: That the damage to the property [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds \$100,000)](.)

[or]

Second Proposition: That the damage to the property [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds

\$100,000))[(.) and the damage occurred to [(property of a school) (property of a place of worship) (farm equipment) (immovable items of agricultural production) (property which memorializes or honors a [(group of)] [(police officer(s)) (fire fighter(s))]) (property which memorializes or honors [(a member) (members))] of the [(United States Armed Forces) (National Guard))] (property which memorializes or honors [(a veteran) (veterans)])].

[or]

[4] *First Proposition:* That the defendant knowingly injured a domestic animal of _____; and

Second Proposition: That the defendant did so without the consent of _____ [(.) (; and

Third Proposition: That the damage to the property was [(more than \$10,000) (more than \$100,000).]

[or]

Third Proposition: That the damage to the property [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds \$100,000))[(.) and the damage occurs to [(property of a school) (property of a place of worship)].)

[5] *First Proposition:* That the defendant knowingly deposited [(a stink bomb) (an offensive smelling compound)] [(on the land) (in the building)] of _____; and

Second Proposition: That the defendant did so with the intent to interfere with _____'s use of the [(land) (building)] and

Third Proposition: That the damage to the property [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds \$100,000).

[or]

Third Proposition: That the damage to the property [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds \$100,000))[(.) and the damage occurred to [(property of a school) (property of a place of worship) (farm equipment) (immovable items of agricultural production) (property which memorializes or honors a [(group of)] [(police officer(s)) (fire fighter(s))]) (property which memorializes or honors [(a member) (members))] of the [(United States Armed Forces) (National Guard))] (property which memorializes or honors [(a veteran) (veterans)])].

[or]

[6] *First Proposition:* That the defendant knowingly damaged any property with intent to defraud an insurer; and

Second Proposition: That the damage to the property was [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds \$100,000)].

[or]

Second Proposition: That the damage to the property [(exceeds \$500) (exceeding 500 and not exceeding \$10,000) (exceeding \$10,000 and not exceeding \$100,000) (exceeds \$100,000)][(.) and the damage occurred to [(property of a school) (property of a place of worship) (farm equipment) (immovable items of agricultural production) (property which memorializes or honors a [(group of)] [(police officer(s)) (fire fighter(s))]) (property which memorializes or honors [(a member) (members)]) of the [(United States Armed Forces) (National Guard)]] (property which memorializes or honors [(a veteran) (veterans)])],

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved December 1, 2017

720 ILCS 5/21-1 (West 2017), amended by P.A. 86-496, effective January 1, 1990; P.A. 86-1254, effective January 1, 1991; and P.A. 88-406, effective August 20, 1993; P.A. 88-558, effective January 1, 1995; P.A. 89-8, effective March 21, 1995; P.A. 91-360, effective July 29, 1999; P.A. 92-454, effective January 1, 2002; P.A. 94-509, effective August 9, 2005; P.A. 95-553, effective June 1, 2008; P.A. 96-529, effective August 14, 2009; P.A. 97-1108, effective January 1, 2013; and, P.A. 98-315, effective January 1, 2014.

Give Instruction 16.01.

When the charge of criminal damage to property exceeding a specified value is brought, the statute specifically states that the extent of the damage is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the specified value. Accordingly, give the final proposition in each set of propositions when the value of the property exceeds the specified value.

Although not specifically stated in the statute, the same logic would apply to a determination regarding the enhanced classification for damage to certain specified property. When the charge alleges an enhanced class of felony based on damage to a specific type of property, as listed in sections (d)(1)(C), (G), (I), or (J), it is the opinion of the Committee that the trier of fact should determine, as an issue in the Instruction, if the damaged property is of the type alleged in the charge. Accordingly, use the applicable bracketed material if paragraph [7] when the class of felony is enhanced based on an allegation of damage to a specific statutorily stated type of property. If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each

definitional instruction, issues instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$300, then this instruction would begin “To sustain the charge of criminal damage to property in excess of \$300, the State must prove . . .”.

For an offense brought under Section 21-1 (7) use Instruction 16.04. As stated in the Committee Note to 16.03, this section defines a separate and distinct offense from the other criminal damage to property sections and do not require a determination of the value of damage. These sections do not have an enhancement for damage over of a specified value.

For an offense brought under Section 21-1(a)(8) and (9), use Instruction 16.06. As stated in the Committee Note to 16.03, these offenses define separate and distinct offenses from other the other criminal damage to property sections and do not require a determination of the value of damage. These sections do not have an enhancement for damage over of a specified value.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without his consent” in Instruction 16.01 (see Committee Note to Instruction 16.01), and this instruction must be combined with the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without consent, the Committee has concluded that the phrase “without his consent” need not be used in this issues instruction.

Insert in the blanks the name of the alleged victim.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.02X Issues In Criminal Defacement Of Property

To sustain the charge of criminal defacement of property (in excess of \$500), the State must prove the following propositions:

First Proposition: That the defendant knowingly damaged the property of _____ by defacing, deforming, or otherwise damaging such property by the use of paint or any similar substance or by the use of a writing instrument, etching tool, or any other similar device[(.) (; and)]

[*Second Proposition:* That the damage to the property was more than \$500.]

[or]

Second Proposition: That the damage occurs to [(property of a school) (property of a place of worship) (property which memorializes or honors [(an individual) (a group of)] [(police officer(s)) (fire fighter(s))]) (property which memorializes or honors [(a member) (members)] of the [(United States Armed Forces) (National Guard)]) (property which memorializes or honors [(a veteran) (veterans)])].

[or]

Second Proposition: That the damage to the property exceeds \$500 and the damage occurs to [(property of a school) (property of a place of worship) (property which memorializes or honors [(an individual) (a group of)] [(police officer(s)) (fire fighter(s))]) (property which memorializes or honors [(a member) (members)] of the [(United States Armed Forces) (National Guard)]) (property which memorializes or honors [(a veteran) (veterans)])].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved December 1, 2017

720 ILCS 5/21-1.3 (West 2017), added by P.A. 88-406, effective August 20, 1993. Amended by P.A. 90-685, effective January 1, 1999; P.A. 91-360, effective July 29, 1999; P.A. 91-931, effective June 1, 2001; P.A. 95-553, effective June 1, 2008; P.A. 96-499, effective August 14, 2009; P.A. 97-1108, effective January 1, 2013; P.A. 98-315, effective January 1, 2014; P.A. 98-466, effective August 16, 2013; P.A. 98-756, effective July 16, 2014.

Give Instruction 16.01X. Use *only* for offenses allegedly committed on or after August 20, 1993.

Whenever the jury is to be instructed on an affirmative defense, it is necessary to use the phrase “without that person’s consent” in Instruction 16.01X. (see Committee Note to Instruction 16.01X), and this instruction must be combined with

the appropriate instructions from Chapter 24-25.00. Since the additional proposition or propositions that will thereby be included will require the jury to find that the defendant acted without consent, the Committee has concluded that the phrase “without that person’s consent” need not be used in this issues instruction.

When the charge of criminal defacement of property exceeding \$500 is brought, the Committee believes that the extent of the damage is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding that value. Accordingly, give the appropriate bracketed Second Proposition when the value of the property exceeds \$500.

If the value of the property is an issue, then separate definitional instructions, issues instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issues instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$500, then this instruction would begin “To sustain the charge of criminal defacement of property in excess of \$500, the State must prove . . .”.

Insert in the blanks the name of the alleged victim.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.03 Definition Of Shooting A Firearm At A Train—Criminal Damage

A person commits the offense of shooting a firearm at a train when he knowingly shoots a firearm at any portion of a railroad train.

Committee Note

Committee Note Approved December 1, 2017

720 ILCS 5/21-1(a)(7) (West, 2017), amended by P.A. 86-496, effective January 1, 1990, and P.A. 86-1254, effective January 1, 1991; P.A. 88-406, effective August 20, 1993; P.A. 88-558, effective January 1, 1995; P.A. 89-8, effective March 21, 1995; P.A. 91-360, effective July 29, 1999; P.A. 92-454, effective January 1, 2002; P.A. 94-509, effective August 9, 2005; P.A. 95-553, effective June 1, 2008; P.A. 96-529, effective August 14, 2009; P.A. 97-1108, effective January 1, 2013; and, P.A. 98-315, effective January 1, 2014.

Give Instruction 16.04.

Although contained in the criminal damage statute, Chapter 720, Section 21-1(7) defines a separate and distinct offense. That offense is a felony without regard to the amount of damage caused and even without regard to whether any damage is caused. Compare Committee Note to Instruction 16.01. The Committee concluded that the jury would be less likely to be confused by a separate instruction defining this offense without any reference to the term “criminal damage.”

16.04 Issues In Shooting A Firearm At A Train—Criminal Damage

To sustain the charge of shooting a firearm at a train, the State must prove the following proposition:

That the defendant knowingly shot a firearm at any portion of a railroad train.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Committee Note Approved December 1, 2017

720 ILCS 5/21-1 (West, 2017) amended by P.A. 86-496, effective January 1, 1990, and P.A. 86-1254, effective January 1, 1991; P.A. 88-406, effective August 20, 1993; P.A. 88-558, effective January 1, 1995; P.A. 89-8, effective March 21, 1995; P.A. 91-360, effective July 29, 1999; P.A. 92-454, effective January 1, 2002; P.A. 94-509, effective August 9, 2005; P.A. 95-553, effective June 1, 2008; P.A. 96-529, effective August 14, 2009; P.A. 97-1108, effective January 1, 2013; and, P.A. 98-315, effective January 1, 2014.

Give Instruction 16.03.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.05 Definition Of Criminal Damage To Property—Fire Fighting Equipment, Apparatus, And Hydrants

A person commits the offense of criminal damage to property when he

[1] knowingly, without proper authorization, [(cuts) (injures) (damages) (tampers with) (destroys) (defaces)] [(any fire hydrant) (any public or private fire fighting equipment) (any apparatus appertaining to any fire fighting equipment)].

[or]

[2] intentionally opens any fire hydrant without proper authorization.

Committee Note*Instruction and Committee Note Approved December 1, 2017*

720 ILCS 5/21-1(a)(8) and (9) (West 2017), amended by P.A. 86-496, effective January 1, 1990, and P.A. 86-1254, effective January 1, 1991; P.A. 88-406, effective August 20, 1993; P.A. 88-558, effective January 1, 1995; P.A. 89-8, effective March 21, 1995; P.A. 91-360, effective July 29, 1999; P.A. 92-454, effective January 1, 2002; P.A. 94-509, effective August 9, 2005; P.A. 95-553, effective June 1, 2008; P.A. 96-529, effective August 14, 2009; P.A. 97-1108, effective January 1, 2013; and, P.A. 98-315, effective January 1, 2014.

Give Instruction 16.06.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.06 Issues In Criminal Damage To Property—Fire Fighting Equipment, Apparatus, And Hydrants

To sustain the charge of criminal damage to property, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(cut) (injured) (damaged) (tampered with) (destroyed) (defaced)] [(any fire hydrant) (any public or private firefighting equipment) (any apparatus appertaining to any firefighting equipment)]; and

Second Proposition: That the defendant did so without proper authority.

[or]

First Proposition: That the defendant intentionally opened a fire hydrant; and

Second Proposition: That the defendant did so without proper authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Committee Note Approved December 1, 2017

720 ILCS 5/21-1(a)(8) and (9) (West 2017), amended by P.A. 86-496, effective January 1, 1990, and P.A. 86-1254, effective January 1, 1991; P.A. 88-406, effective August 20, 1993; P.A. 88-558, effective January 1, 1995; P.A. 89-8, effective March 21, 1995; P.A. 91-360, effective July 29, 1999; P.A. 92-454, effective January 1, 2002; P.A. 94-509, effective August 9, 2005; P.A. 95-553, effective June 1, 2008; P.A. 96-529, effective August 14, 2009; P.A. 97-1108, effective January 1, 2013; and P.A. 98-315, effective January 1, 2014.

Give Instruction 16.05.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.07 Definition Of Institutional Vandalism

A person commits the offense of institutional vandalism when, by reason of the actual or perceived [(race) (color) (creed) (religion) (national origin)] of another individual or group of individuals, he knowingly and without consent inflicts damage [exceeding \$300] to

[1] a [(church) (synagogue) (building, structure, or place used for religious worship or other religious purpose)].

[or]

[2] a [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)].

[or]

[3] a [(school) (educational facility) (community center)].

[or]

[4] the grounds adjacent to, and owned or rented by, a

[a] [(church) (synagogue) (structure or place used for a religious purpose)].

[or]

[b] [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)].

[or]

[c] [(school) (educational facility) (community center)].

[or]

[5] any personal property contained in a

[a] [(church) (synagogue) (building, structure, or place used for religious worship or other religious purpose)];

[or]

[b] [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)];

[or]

[c] [(school) (educational facility) (community center)].

Committee Note

720 ILCS 5/21-1.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 21-1.2 (1991)), amended by P.A. 88-659, effective September 16, 1994.

Give Instruction 16.08.

Section (b) enhances the penalty from a Class 3 felony to a Class 2 felony when the damage exceeds \$300. Thus, give the bracketed phrase in the opening paragraph

("[exceeding \$300]") when the amount of the damage is an issue. When the amount of the damage is an issue, it should be resolved by the jury.

Use applicable paragraphs, subparagraphs, and bracketed material.

P.A. 88-659, effective September 16, 1994, amended the statute to include the "actual or perceived" language regarding the victim's status. The Committee has accordingly modified the opening paragraph to reflect this amendment.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.08 Issues In Institutional Vandalism

To sustain the charge of institutional vandalism, the State must prove the following propositions:

First Proposition: That the defendant knowingly and without consent damaged

[1] a [(church) (synagogue) (building, structure, or place used for religious worship or other religious purpose)].

[or]

[2] a [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)].

[or]

[3] a [(school) (educational facility) (community center)].

[or]

[4] the grounds adjacent to, and owned or rented by, a

[a] [(church) (synagogue) (structure or place used for a religious purpose)].

[or]

[b] [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)].

[or]

[c] [(school) (educational facility) (community center)].

[or]

[5] any personal property contained in a

[a] [(church) (synagogue) (building, structure, or place used for religious worship or other religious purpose)];

[or]

[b] [(cemetery) (mortuary) (facility used for the purpose of burial or memorializing the dead)];

[or]

[c] [(school) (educational facility) (community center)];

and

Second Proposition: That the defendant inflicted the damage by reason of the actual or perceived [(race) (color) (creed) (religion) (national origin)] of another individual or group of individuals[(: and) (.)]

[Third Proposition: That the damage exceeded \$300.]

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-1.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 21-1.2 (1991)), amended by P.A. 88-659, effective September 16, 1994.

Give Instruction 16.07.

Use applicable paragraphs, subparagraphs, and bracketed material.

Give the bracketed Third Proposition only when the issue arises whether the amount of the damage exceeds \$300. See the Committee Note to Instruction 16.07.

The bracketed numbers and letters are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.09 Definition Of Criminal Trespass To Vehicle

A person commits the offense of criminal trespass to a vehicle when he, knowingly and without authority, [(enters any part of) (operates)] any [(vehicle) (aircraft) (watercraft) (snowmobile)].

Committee Note

720 ILCS 5/21-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-2 (1991)).

Give Instruction 16.10.

The word “vehicle” is defined in Instruction 23.20. That definition is taken from the Illinois Vehicle Code, 625 ILCS 5/4-100. There are other definitions of the word “vehicle” in the Illinois statutes, such as 625 ILCS 5/1-217. The Committee takes no position on which of these definitions should be given.

Use applicable bracketed material.

16.10 Issues In Criminal Trespass To Vehicle

To sustain the charge of criminal trespass to a vehicle, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(entered any part of) (operated)] any [(vehicle) (aircraft) (watercraft) (snowmobile)]; and

Second Proposition: That the defendant did so without authority.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-2 (1991)).

Give Instruction 16.09.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.11 Definition Of Criminal Trespass To Real Property

A person commits the offense of criminal trespass to real property when he [(knowingly) (intentionally) (recklessly)]

[1] enters [(upon the land) (a building other than a residence)] of another [or any part thereof] after receiving, prior to such entry, notice from the [(owner) (occupant)] that such entry is forbidden.

[or]

[2] remains [(upon the land) (in a building other than a residence)] of another after receiving notice from the [(owner) (occupant)] to depart.

[or]

[3] enters, in or on a motor vehicle, [(a field that is [capable of being] used for growing crops) (an enclosed area containing livestock) (an orchard) (a barn or other agricultural building containing livestock)] after receiving, prior to such entry, notice from the [(owner) (occupant)] that such entry is forbidden. [A motor vehicle includes an off-road vehicle, motorcycle, moped, or any other powered two-wheel vehicle.]

[or]

[4] remains in [(a field that is [capable of being] used for growing crops) (an enclosed area containing livestock) (an orchard) (a barn or other agricultural building containing livestock)] that he entered in or on a motor vehicle, after receiving notice from the [(owner) (occupant)] to depart. [A motor vehicle includes an off-road vehicle, motorcycle, moped, or any other powered two-wheel vehicle.]

Committee Note

720 ILCS 5/21-3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 21-3 (1991)); amended by P.A. 89-346, effective January 1, 1996.

Give either Instruction 16.12 or 16.12A.

Give Instruction 16.11A.

Although Section 21-3 does not include a mental state, the Committee provided three alternative mental states pursuant to *People v. Grant*, 101 Ill.App.3d 43, 47-48, 56 Ill.Dec. 478, 482, 427 N.E.2d 810, 814 (1st Dist. 1981), which held that Section 4-3 incorporates a mental state requirement into this offense. See 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)). Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction. See the Committee Note to Instruction 5.01A regarding the applicable mental state.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

16.11A Definition Of Notice—Criminal Trespass To Real Property

[For purposes of the offense of criminal trespass to real property,] [(A) (a)] person has received notice from the owner or occupant if [(he has been notified personally, either orally or in writing) (a printed or written notice forbidding such entry to him or a group of which he is a part has been conspicuously posted or exhibited at the main entrance of such land or the forbidden part thereof)].

Committee Note

720 ILCS 5/21-3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-3(b) (1991)).

This definition of notice applies only to the offense of criminal trespass to real property. Note that the statute includes a valid court order within the meaning of the word “writing.”

The bracketed phrase “For purposes of the offense of criminal trespass to real property” should be given only if the defendant is charged with at least one other offense and the phrase is necessary to clarify the instructions.

16.12 Issues In Criminal Trespass To Real Property—Prior Warning

To sustain the charge of criminal trespass to real property, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] entered [(upon the land) (a building other than a residence)] of another [or any part thereof]; and

Second Proposition: That prior to the entry, the defendant received notice from the [(owner) (occupant)] of the [(land) (building other than a residence)] that such entry is forbidden.

[or]

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] entered, in or on a motor vehicle, [(a field that is [capable of being] used for growing crops) (an enclosed area containing livestock) (an orchard) (a barn or other agricultural building containing livestock)]; and

Second Proposition: That prior to the entry, the defendant received notice from the [(owner) (occupant)] of the [(field that is [capable of being] used for growing crops) (enclosed area containing livestock) (orchard) (barn or other agricultural building containing livestock)] that such entry is forbidden.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 21-3 (1991)); amended by P.A. 89-346, effective January 1, 1996.

Give Instruction 16.11.

Although Section 21-3 does not include a mental state, the Committee provided three alternative mental states pursuant to *People v. Grant*, 101 Ill.App.3d 43, 47–48, 56 Ill.Dec. 478, 482, 427 N.E.2d 810, 814 (1st Dist. 1981), which held that Section 4-3 incorporates a mental state requirement into this offense. See 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)). Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction. See the Committee Note to Instruction 5.01A regarding the applicable mental state.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.12A Issues In Criminal Trespass To Real Property—Notice To Depart

To sustain the charge of criminal trespass to real property, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally) (recklessly)] remained [(on the land) (in a building other than a residence)] of another after receiving notice from the [(owner) (occupant)] to depart.

[or]

That the defendant, after entering, in or on a motor vehicle, the [(field that is [capable of being] used for growing crops) (enclosed area containing livestock) (orchard) (barn or other agricultural building containing livestock)], [(knowingly) (intentionally) (recklessly)] remained there after receiving notice from the [(owner) (occupant)] to depart.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-3 (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 21-3 (1991)); amended by P.A. 89-346, effective January 1, 1996.

Give Instruction 16.11.

Although Section 21-3 does not include a mental state, the Committee provided three alternative mental states pursuant to *People v. Grant*, 101 Ill.App.3d 43, 47-48, 56 Ill.Dec. 478, 482, 427 N.E.2d 810, 814 (1st Dist. 1981), which held that Section 4-3 incorporates a mental state requirement into this offense. See 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)). Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction. See the Committee Note to Instruction 5.01A regarding the applicable mental state.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.13 Definition Of Criminal Damage To State Or Government Supported Property

A person commits the offense of criminal damage to [(State) (government)] supported property when he

[1] knowingly damages any property supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] without the consent of the State[(.) (; and)]

[or]

[2] knowingly, by means of [(fire) (explosive)], damages property supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] [(.) (; and)]

[or]

[3] knowingly starts a fire on property supported in whole or in part by [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] without the consent of the State[(.) (; and)]

[or]

[4] knowingly deposits [(on the land) (in the building)] supported in whole or in part by [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] without the consent of the State, [(a stink bomb) (any offensive smelling compound)] with the intent to interfere with the use by another of the [(land) (building)] [(.) (; and)]

[5] the damage to the property [(exceeds \$500) (exceeds \$10,000) (exceeds \$100,000)].

Committee Note

720 ILCS 5/21-4 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 21-4), amended by P.A. 86-1254, effective January 1, 1991; and P.A. 89-31, effective January 1, 1996.

P.A. 89-31 amended Section 21-4 by (1) changing the title of the offense from "Criminal Damage to State Supported Property" to "Criminal Damage to Government Supported Property," and (2) adding that the offense can be committed when property supported by "funds of a local government or school district" is damaged. However, these changes become effective January 1, 1996, and apply prospectively only.

Do not use either bracketed alternative "government" or "funds of a local government or school district" for offenses allegedly occurring before January 1, 1996.

Give Instruction 16.14.

The Committee has included the value of the damage of the property as an issue to be resolved by the jury because Section 21-4(1) sets forth different penalties depending on the damage to the property in question. See *People v. Mays*, 80

Ill.App.3d 340, 35 Ill.Dec. 652, 399 N.E.2d 718 (3d Dist. 1980). Accordingly, the Committee has included paragraph [5] which should be given when the value of the property exceeds \$500.

If the amount of damage to the property is an issue, then separate definitional instructions, issue instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$500, then this instruction would begin "A person commits the offense of criminal damage to State supported property in excess of \$500 when he . . ."

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.14 Issues In Criminal Damage To State Or Government Supported Property

To sustain the charge of criminal damage to [(State) (government)] supported property, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly damaged any property supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)]; and

Second Proposition: That the defendant did so without the consent of the State[]; and

Third Proposition: That the damage to the property [(exceeded \$500) (exceeded \$10,000) (exceeded \$100,000)].

[or]

[2] *First Proposition:* That the defendant knowingly, by means of [(fire) (explosive)], damaged property supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)] []; and

Second Proposition: That the damage to the property [(exceeded \$500) (exceeded \$10,000) (exceeded \$100,000)].

[or]

[3] *First Proposition:* That the defendant knowingly started a fire on property supported in whole or in part by [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school district)]; and

Second Proposition: That the defendant did so without the consent of the State[]; and

Third Proposition: That the damage to the property [(exceeded \$500) (exceeded \$10,000) (exceeded \$100,000)].

[or]

[4] *First Proposition:* That the defendant knowingly deposited [(on the land) (in the building)] supported in whole or in part by [(State funds) (Federal funds administered or granted through State agencies) (funds of a local government or school)] [(a stink bomb) (an offensive smelling compound)]; and

Second Proposition: That the defendant did so with the intent to interfere with the use by another of the [(land) (building)]; and

Third Proposition: That the defendant did so without the consent of the State[]; and

Fourth Proposition: That the damage to the property [(exceeded \$500) (exceeded \$10,000) (exceeded \$100,000)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these

propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-4 (West, 1994) (formerly Ill.Rev.Stat. ch. 38, § 21-4), amended by P.A. 86-1254, effective January 1, 1991; and P.A. 89-31, effective January 1, 1996.

P.A. 89-31 amended Section 21-4 by (1) changing the title of the offense from “Criminal Damage to State Supported Property” to “Criminal Damage to Government Supported Property,” and (2) adding that the offense can be committed when property supported by “funds of a local government or school district” is damaged. However, these changes become effective January 1, 1996, and apply prospectively only.

Do *not* use either bracketed alternative “government” or “funds of a local government or school district” for offenses allegedly occurring before January 1, 1996.

Give Instruction 16.13.

The Committee has included the amount of the damage of the property as an issue to be resolved by the jury because Section 21-4(1) sets forth different penalties depending on the damage to the property in question. See *People v. Mays*, 80 Ill.App.3d 340, 35 Ill.Dec. 652, 399 N.E.2d 718 (3d Dist. 1980). Accordingly, the Committee has included the final proposition in each set of propositions which should be given when the value of the property exceeds \$500.

If the amount of damage to the property is an issue, then separate definitional instructions, issue instructions, and verdict forms should be given to permit the jury to resolve that dispute with its verdict. Under these circumstances, the jury should receive instructions and verdict forms for both the greater and lesser offenses. In addition, the name of the offense should be expanded in each definitional instruction, issue instruction, and verdict form so as to distinguish the greater offense from the lesser offense. For example, if the value of the property exceeds \$500, then this instruction would begin “To sustain the charge of criminal damage to State supported property in excess of \$500, the State must prove . . .”

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.15 Definition Of Criminal Trespass To State Supported Land

A person commits the offense of criminal trespass to State supported land when he [(knowingly) (intentionally) (recklessly)]

[1] enters [(upon land) (a building on land)] supported in whole or in part with [(State funds) (Federal funds administered through State agencies)] after receiving, prior to such entry, notice from the State or its representative that such entry is forbidden and who thereby interferes with another person's lawful use or enjoyment of such [(land) (building)].

[or]

[2] remains [(upon land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies)] after receiving notice from the State or its representatives to depart and who thereby interferes with another person's lawful use or enjoyment of such [(land) (building)].

Committee Note

720 ILCS 5/21-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-5 (1991)).

Give either Instruction 16.16 or 16.16A.

Give Instruction 16.15A, defining the word "notice."

See Chapter 720, Sections 4-3 and 4-9 and Committee Note to Instruction 5.01A, regarding the applicable mental state.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instructions submitted to the jury.

16.15A Definition Of Notice—Criminal Trespass To State Supported Land

[For purposes of the offense of criminal trespass to State supported land,] [(A) (a)] person has received notice from the State if [(he has been notified personally, either orally or in writing) (a printed or written notice forbidding such entry to him or a group of which he is a part has been conspicuously posted or exhibited at the main entrance of such land or the forbidden part thereof)].

Committee Note

720 ILCS 5/21-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-5 (1991)).

This definition of notice applies only to the offense of criminal trespass to State supported land.

The bracketed phrase “For purposes of the offense of criminal trespass to State supported land” should be given only if the defendant is charged with at least one other offense and the phrase is necessary to clarify the instructions.

16.16 Issues In Criminal Trespass To State Supported Land—Prior Warning

To sustain the charge of criminal trespass to State supported land, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] entered [(upon land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies)]; and

Second Proposition: That the defendant received, prior to such entry, notice from the State or its representative that such entry was forbidden; and

Third Proposition: That the defendant thereby interfered with another person's lawful use or enjoyment of such [(land) (building)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-5 (1991)).

Give Instruction 16.15.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.16A Issues In Criminal Trespass To State Supported Land—Notice To Depart

To sustain the charge of criminal trespass to State supported land, the State must prove the following propositions:

First Proposition: That the defendant [(knowingly) (intentionally) (recklessly)] remained [(upon land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered or granted through State agencies)] after receiving notice from the State or its representatives to depart; and

Second Proposition: That the defendant thereby interfered with another person's lawful use or enjoyment of such [(land) (building)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-5 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-5 (1991)).

Give Instruction 16.15.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.17 Definition Of Unauthorized Possession Or Storage Of Weapons

A person commits the offense of unauthorized possession or storage of weapons when he knowingly [(possesses) (stores)] any [(pistol) (revolver) (rifle) (shotgun) (spring gun) (other firearm) (sawed-off shotgun) (stun gun or taser) (knife with a blade of at least three inches in length) (bludgeon) (black jack) (slungshot) (sand-bag) (sand-club) (metal knuckles) (dagger) (billy) (switch blade knife) (stiletto) [or other dangerous weapon or instrument of like character]] [(on land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered through State agencies)] without prior written permission from the chief security officer for the [(land) (building)].

Committee Note

720 ILCS 5/21-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-6 (1991)). This statutory provision does not name specific weapons, but refers to those weapons named in Chapter 720, Section 33A-1. That section should also be reviewed.

Give Instruction 16.18.

The bracketed phrase “or other dangerous weapon or instrument of like character” should be used only when the weapon charged is not one of the weapons specifically enumerated. When the phrase is used, it must be used in conjunction with one or more of the enumerated weapons.

Chapter 720, Section 21-6(b) provides that the chief security officer must grant any reasonable request for permission under subparagraph (a). This instruction may have to be modified when such a request is at issue. The Committee takes no position as to whether lack of permission is an affirmative defense.

The phrase “stun gun or taser” is defined in Chapter 720, Section 24-1(a)(10), and in Instruction 18.35E.

Use applicable bracketed material.

16.18 Issues In Unauthorized Possession Or Storage Of Weapons

To sustain the charge of unauthorized possession or storage of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(possessed) (stored)] any [(pistol) (revolver) (rifle) (shotgun) (spring gun) (other firearm) (sawed-off shotgun) (bludgeon) (stun gun or taser) (knife with a blade of at least three inches in length) (blackjack) (slungshot) (sand-club) (sand-bag) (metal knuckles) (dagger) (dirk) (billy) (switch-blade knife) (stiletto) [or other dangerous weapon or instrument of like character]]; and

Second Proposition: That the defendant did so [(on land) (in a building on land)] supported in whole or in part with [(State funds) (Federal funds administered through State agencies)] without prior written permission from the chief security officer for such [(land) (building)].

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-6 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-6 (1991)).

Give Instruction 16.17.

Section 21-6 does not name specific weapons, but refers to those weapons named in Chapter 720, Section 33A-1. That section should also be reviewed.

The bracketed phrase “or other dangerous weapon or instrument of like character” should be used only when the weapon charged is not one of the weapons specifically enumerated. When the phrase is used, it must be used in conjunction with one or more of the enumerated weapons.

The phrase “stun gun or taser” is defined in Chapter 720, Section 24-1(a)(10), and in Instruction 18.35E.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.19 Definition Of Interference With Public Institution Of Higher Education

A person commits the offense of interference with a public institution of higher education when [(on the campus of a public institution of higher education) (at or in a building or other facility owned, operated, or controlled by a public institution of higher education)] and without authority from the institution, through force or violence, actual or threatened, he

[1] wilfully denies to a[n] [(trustee) (employee) (student) (invitee)] of the institution [(freedom of movement at such place) (use of the property or facilities of the institution) (the right to ingress or egress to the property or facilities of the institution)].

[or]

[2] wilfully [(impedes) (obstructs) (interferes with) (disrupts)] [(the performance of institutional duties by a[n] [(trustee) (employee)] of the institution) (the pursuit of educational activities as determined or prescribed by the institution by a[n] [(trustee) (employee) (student) (invitee)] of the institution)].

[or]

[3] knowingly occupies or remains in or at a [(building) (property) (facility)] owned, operated, or controlled by the institution after due notice to depart.

Committee Note

720 ILCS 5/21.2-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21.2-2 (1991)).

Give Instruction 16.20.

Use applicable paragraphs and bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.20 Issues In Interference With Public Institution Of Higher Education

To sustain the charge of interference with a public institution of higher education, the State must prove the following propositions:

First Proposition: That while the defendant was [(on the campus of a public institution of higher education) (at or in a building or other facility owned, operated, or controlled by a public institution of higher education)], he wilfully denied to a[n] [(trustee) (employee) (student) (invitee)] of the institution [(freedom of movement at such place) (use of the property or facilities of the institution) (the right of ingress or egress to the property or facilities of the institution)];

[or]

First Proposition: That while the defendant was [(on the campus of a public institution of higher education) (at or in a building or other facility owned, operated, or controlled by a public institution of higher education)] he wilfully [(impeded) (obstructed) (interfered with) (disrupted)] [(the performance of institutional duties by a[n] [(trustee) (employee)] of the institution) (the pursuit of educational activities, as determined or prescribed by the institution, by a[n] [(trustee) (employee) (student) (invitee)] of the institution)];

[or]

First Proposition: That while the defendant was [(on the campus of a public institution of higher education) (at or in a building or other facility owned, operated, or controlled by a public institution of higher education)], he knowingly [(occupied) (remained in or at)] a [(building) (property) (facility)] owned, operated, or controlled by the institution after due notice to depart;

and

Second Proposition: That the defendant did so without authority from the institution and through force or violence, actual or threatened.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21.2-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21.2-2 (1991)).

Give Instruction 16.19.

See Chapter 720, Section 21.2-5 for definitions of the phrase “public institution of higher education,” the term “due notice,” and the phrase “force or violence.”

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose

conduct he is legally responsible" after the word "defendant" in each proposition. See Instruction 5.03.

16.21 Definition Of Criminal Trespass To Restricted Areas At Airports

A person commits the offense of criminal trespass to restricted areas at airports when he [(enters upon) (remains in)] [(any restricted area) (any restricted landing area)] used in connection with an airport facility [or part thereof] after such person has received notice from the airport authority that such entry is forbidden.

Committee Note

720 ILCS 5/21-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-7 (1991)).

Give Instruction 16.22.

When applicable, give Instruction 16.21A, defining the term “restricted area” and the phrase “restricted landing area.”

When applicable, give Instruction 16.21B, defining the word “notice” within the meaning of Section 21-7.

Use applicable bracketed material.

16.21A Definition Of Restricted Area Or Restricted Landing Areas At Airports

The term "restricted area" or the phrase "restricted landing area" means any area of land, water, or both which is used or is made available for the landing and takeoff of aircraft, and includes any area that has been restricted by the airport authority.

Committee Note

720 ILCS 5/21-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-7 (1991)).

16.21B Definition Of Notice—Criminal Trespass To Restricted Areas At Airports

[For purposes of the offense of criminal trespass to restricted areas at airports,] [(The) (the)] word “notice” means that a person has been informed that entry is forbidden [(by personal notification either orally or in writing) (by a printed or written notice forbidding such entry to that person, or a group or an organization of which that person is a member, which has been conspicuously posted or exhibited at every useable entrance to the forbidden area or part thereof)].

Committee Note

720 ILCS 5/21-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-7 (1991)).

The bracketed phrase “For purposes of the offense of criminal trespass to restricted areas at airports” should be given only when the defendant is charged with at least one other offense and the phrase is necessary to limit the applicability of this instruction.

This definition of the word “notice” applies only to the offense of criminal trespass to restricted areas at airports.

Use applicable bracketed material.

16.22 Issues In Criminal Trespass To Restricted Areas At Airports

To sustain the charge of criminal trespass to restricted areas at airports, the State must prove the following proposition:

That the defendant [(knowingly) (intentionally) (recklessly)] [(entered upon) (remained in)] [(any restricted area) (any restricted landing area)] used in connection with an airport facility [or part thereof] after the defendant had received notice from the airport authority that such entry is forbidden.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that this proposition has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 5/21-7 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, § 21-7 (1991)).

Give Instruction 16.21.

See Chapter 720, Sections 4-3 and 4-9 and Committee Note to Instruction 5.01A, regarding the applicable mental state.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.

16.23 Definition Of Criminal Trespass To A Cemetery

A person commits the offense of criminal trespass to a cemetery when he

[1] [(intentionally) (knowingly) (recklessly)] violates any of the rules made and established by the board of directors of a cemetery for the protection or government thereof.

[or]

[2] knowingly [(enters) (remains upon)] the premises of a public or private cemetery without authorization during hours that the cemetery is posted as closed to the public.

Committee Note

765 ILCS 835/1(e) and (f) (West, 1992) (formerly Ill.Rev.Stat. ch. 21, § 15(e) and (f) (1991)), amended by P.A. 87-527, effective September 16, 1991.

Give Instruction 16.24.

Use paragraph [1] for charges brought under Section 1(e) and paragraph [2] for charges brought under Section 1(f).

Because Sections 1(e) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)) in paragraph [1]. The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 169 Ill.Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see* *People v. Gean*, 143 Ill.2d 281, 158 Ill.Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill.2d 397, 168 Ill.Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 60 Ill.Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

16.24 Issues In Criminal Trespass To A Cemetery

To sustain the offense of criminal trespass to a cemetery, the State must prove the following proposition[s]:

[1] That the defendant [(intentionally) (knowingly) (recklessly)] violated any of the rules made and established by the board of directors of a cemetery for the protection or government thereof.

[or]

[2] *First Proposition:* That the defendant knowingly [(entered) (remained upon)] the premises of a public or private cemetery without authorization; and

[3] *Second Proposition:* That the defendant did so during hours that the cemetery was posted as closed to the public.

If you find from your consideration of all the evidence that [(this proposition) (each of these propositions)] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this proposition) (any one of these propositions)] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

765 ILCS 835/1(e) and (f) (West, 1992) (formerly Ill.Rev.Stat. ch. 21, § 15(e) and (f) (1991)), amended by P.A. 87-527, effective September 16, 1991.

Give Instruction 16.23.

Because Sections 1(e) does not include a mental state, the Committee decided to provide three alternative mental states pursuant to 720 ILCS 5/4-3(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, § 4-3(b) (1991)) in paragraph [1]. The Committee believes this action to be in accordance with *People v. Anderson*, 148 Ill.2d 15, 169 Ill.Dec. 288, 591 N.E.2d 461 (1992), which held that even though the criminal hazing statute listed no mental state, Section 4-3(b) still placed on the State the burden of proving either intent, knowledge, or recklessness. (*But see People v. Gean*, 143 Ill.2d 281, 158 Ill.Dec. 5, 573 N.E.2d 818 (1991), *People v. Tolliver*, 147 Ill.2d 397, 168 Ill.Dec. 127, 589 N.E.2d 527 (1992), and *People v. Whitlow*, 89 Ill.2d 322, 60 Ill.Dec. 587, 433 N.E.2d 629 (1982) for cases in which the Illinois Supreme Court used Section 4-3(b) to choose one or two, but not all three, of these mental states for particular offenses having no statutorily specified mental state.) Select the mental state consistent with the charge. If the charging instrument alleges the existence of more than one mental state, the same alternative mental states may be included in the instruction.

Use applicable bracketed material.

The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition.

See Instruction 5.03.

To sustain the offense of criminal trespass to a cemetery, the State must prove the following propositions: (1) That the defendant (intentionally) (knowingly) (recklessly) entered upon the premises of a public or private cemetery without authorization; and (2) Second Proposition: That the defendant did so during hours that the cemetery was posted as closed to the public.

If you find from your consideration of all the evidence that (this proposition) (each of these propositions) has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that (this proposition) (any one of these propositions) has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Give instruction 16.24. Because Section 16-24 does not include a mental state, the Commission decided to provide three alternative mental state patterns to 720 ILCS 24-2 (West, 1992). Formerly ILCS 24-2, 38-2, 40-2, 41-2, 42-2, 43-2, 44-2, 45-2, 46-2, 47-2, 48-2, 49-2, 50-2, 51-2, 52-2, 53-2, 54-2, 55-2, 56-2, 57-2, 58-2, 59-2, 60-2, 61-2, 62-2, 63-2, 64-2, 65-2, 66-2, 67-2, 68-2, 69-2, 70-2, 71-2, 72-2, 73-2, 74-2, 75-2, 76-2, 77-2, 78-2, 79-2, 80-2, 81-2, 82-2, 83-2, 84-2, 85-2, 86-2, 87-2, 88-2, 89-2, 90-2, 91-2, 92-2, 93-2, 94-2, 95-2, 96-2, 97-2, 98-2, 99-2, 100-2, 101-2, 102-2, 103-2, 104-2, 105-2, 106-2, 107-2, 108-2, 109-2, 110-2, 111-2, 112-2, 113-2, 114-2, 115-2, 116-2, 117-2, 118-2, 119-2, 120-2, 121-2, 122-2, 123-2, 124-2, 125-2, 126-2, 127-2, 128-2, 129-2, 130-2, 131-2, 132-2, 133-2, 134-2, 135-2, 136-2, 137-2, 138-2, 139-2, 140-2, 141-2, 142-2, 143-2, 144-2, 145-2, 146-2, 147-2, 148-2, 149-2, 150-2, 151-2, 152-2, 153-2, 154-2, 155-2, 156-2, 157-2, 158-2, 159-2, 160-2, 161-2, 162-2, 163-2, 164-2, 165-2, 166-2, 167-2, 168-2, 169-2, 170-2, 171-2, 172-2, 173-2, 174-2, 175-2, 176-2, 177-2, 178-2, 179-2, 180-2, 181-2, 182-2, 183-2, 184-2, 185-2, 186-2, 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Also applicable bracketed material. The bracketed numbers are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury. When accountability is an issue, ordinarily insert the phrase "or one for whose conduct he is legally responsible" after the word "defendant" in each proposition.

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